



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 3  
1650 ARCH STREET  
PHILADELPHIA, PA 19103

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Adam Ortiz                      ADAM  
Regional Administrator      ORTIZ

Digitally signed by ADAM  
ORTIZ  
Date: 2022.02.16  
17:00:12 -05'00'

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I understand that I have an imputed financial interest based on my position as a board member of the **Pyramid Atlantic Arts Center** and as a member of the **Blue Plains Musical Group**. While I have received approval from OGC/Ethics to continue in both of these outside activities, I understand that I cannot participate personally and substantially in any particular matter that will have a direct and predictable effect on the **Pyramid Atlantic Arts Center** or the **Blue Plains Musical Group** as a specific party or as a member of an affected class, unless I first obtain a written waiver.

## *OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

I understand that, pursuant to Section 1, Paragraph 2 of the Executive Order, the entities set forth in the table below are considered to be my former employers because I served them in a fiduciary role. I further understand that I am prohibited from participating in any particular matter involving specific parties in which the below entities are a party or represents a party. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end after November 1, 2023.

Former Employers
Green America Community Forklift

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding a former employer do not apply to the **Montgomery County Department of Environmental Protection** nor to the **District of Columbia Water and Sewer Authority (DC Water)**, for whom I served as a principal board member on behalf of Montgomery County. The definition of “former employer” excludes an entity of a state or local government.<sup>2</sup> Therefore, OGC/Ethics has confirmed that I am not subject to these additional Executive Order restrictions with respect to the **Montgomery County Department of Environmental Protection** or **DC Water**. I am instead subject to the loss of impartiality provisions, discussed below.

## *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

As a federal employee, I am obliged to adhere to the federal conflicts of interest statutes and the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635. The ethics regulations include specific provisions governing impartiality. *See* 5 C.F.R. Part 2635, Subpart E. I understand that I must take appropriate steps to avoid an appearance of a

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<sup>1</sup> *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

<sup>2</sup> *See* Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

loss of impartiality in the performance of my official duties. Unless I receive prior written authorization, I will not participate in any particular matter involving a specific party that I know will affect the financial interests of member of my household or a person with whom I have a “covered relationship” as defined at 5 CFR § 2635.502(b).

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with my former employer, which is a local government agency. Therefore, I may not participate in a particular matter involving specific parties in which the **Montgomery County Department of Environmental Protection** is a party or represents a party, unless I am first authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts until after October 29, 2022, which is one year after I resigned from the department.

The Alternate Designated Agency Ethics Official issued an impartiality determination to me with respect to DC Water on February 4, 2022. Under that determination, I am authorized to work on specific party matters where DC Water is a party or represents a party, so long as I did not work personally and substantially on those very same specific party matters. *See attached.*

To avoid even an appearance of a loss of impartiality, I am recusing myself from participating personally and substantially in any personnel or administrative matter, including but not limited to awards, promotions, or reassignment, involving Region 3 employee, Brandon Miller, who is a member of the Blue Plains Musical Group, as a specific party. Any such matters should be directed to my screener for appropriate action without my participation or knowledge.

#### *DIRECTIVE AND CONCLUSION*

To avoid my participating in any of the matters from which I am recused, please refer those matters to the attention of the Deputy Regional Administrator, Diana Esher, without my knowledge or involvement. In the event that my circumstances change, including my financial interests, my personal or business relationships, or my EPA duties, then I will consult with OGC/Ethics and/or regional ethics counsel and update my recusal statement accordingly.

Attachment

cc: Diana Esher, Deputy Regional Administrator  
Allison Gardner, Acting Regional Counsel  
Phil Yeany, Team Lead for Ethics  
Justina Fugh, Director, Ethics Office




**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
AIR AND RADIATION

June 17, 2021

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Alejandra Nunez  Alejandra Nunez  
Deputy Assistant Administrator for Mobile Sources

Digitally signed by Alejandra Nunez  
Date: 2021.06.17 23:35:19 -04'00'

TO: Joseph Goffman  
Acting Assistant Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that will have a direct and predictable effect upon any of the following entities as a specific party:

RECUSAL LIST – SPECIFIC PARTY MATTERS		
Amazon	Netflix	SunRun Inc.
Kering	Peloton Interactive, Inc.	Uber Technologies, Inc.
Microsoft	QUALCOMM	Zoom Video Communications, Inc.

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

RECUSAL LIST – SECTORS	
Communication Services (Entertainment, and Interactive Media and Services)	Consumer Services
Electrical Equipment (limited to Solar Energy Systems)	Food and Staples Retailing
Internet and Direct Marketing Retail	Leisure Products
Semiconductors	Software and Services
Technology Hardware and Equipment	Textiles, Apparel and Luxury Goods

#### *OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employers, **Sierra Club, Coalition for Green Capital, or the Clean Energy Federal Credit Union**, is a party or represents a party. Under the terms of the Ethics Pledge, this recusal lasts for two years from the date that I joined federal service, or until January 31, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *ATTORNEY BAR OBLIGATIONS*

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect

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<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics. Thus, I will not participate in the following matters:

CASE NAME:	CITATION:
Union of Concerned Scientists, <i>et al.</i> v. National Highway Traffic Safety Administration	No. 19-1230 (D.C. Cir.) (lead case)
Sierra Club, <i>et al.</i> v. Environmental Protection Agency, <i>et al.</i>	No. 19-1243 (D.C. Cir.) (consolidated)
Competitive Enterprise Institute, <i>et al.</i> v. National Highway Traffic Safety Administration, <i>et al.</i>	No. 20-1145 (D.C. Cir.) (lead case)
Natural Resources Defense Council, <i>et al.</i> v. Andrew R. Wheeler, <i>et al.</i>	No. 20-1168 (D.C. Cir.) (consolidated)
Truck Trailer Manufacturers Association v. Environmental Protection Agency, <i>et al.</i>	No. 16-1430 (D.C. Cir.)
American Lung Association, <i>et al.</i> v. Environmental Protection Agency, <i>et al.</i>	No. 19-1140 (D.C. Cir.) (lead case)
Appalachian Mountain Club, <i>et al.</i> v. Environmental Protection Agency	No. 19-1166 (D.C. Cir.) (consolidated)
Biogenic CO2 Coalition v. Environmental Protection Agency, <i>et al.</i>	No. 19-1185 (D.C. Cir.) (consolidated)
State of North Dakota v. Environmental Protection Agency	No. 15-1381 (D.C. Cir.)

#### *DIRECTIVE AND CONCLUSION*

To avoid participating in matters from which I am recused, please direct them to the attention of **Ann Ferrio, Chief of Staff**, without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

cc: Elizabeth Shaw, Deputy Assistant Administrator  
Tomás Carbonell, Deputy Assistant Administrator for Stationary Sources  
Ann (Campbell) Ferrio, Chief of Staff  
Eunjung Kim, Special Assistant  
Justina Fugh, Director, Ethics Office



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
AIR AND RADIATION

August 18, 2021

**MEMORANDUM**

SUBJECT: Updated Recusal Statement

FROM: Alejandra Nunez **Alejandra Nunez** Digitally signed by Alejandra Nunez  
Deputy Assistant Administrator for Mobile Sources Date: 2021.08.18 23:02:56 -04'00'

TO: Joseph Goffman  
Acting Assistant Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations. This recusal statement supersedes my June 17, 2021 recusal statement.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that will have a direct and predictable effect upon any of the following entities as a specific party:



RECUSAL LIST – SPECIFIC PARTY MATTERS	
Amazon	Peloton Interactive, Inc.
Expeditors International of Washington, Inc.	QUALCOMM
Kering	SunRun Inc.
Microsoft	Uber Technologies, Inc.
Netflix	Zoom Video Communications, Inc.

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

RECUSAL LIST – SECTORS	
Communication Services (Entertainment, and Interactive Media and Services)	Consumer Services
Logistics Services	Food and Staples Retailing
Internet and Direct Marketing Retail	Leisure Products
Semiconductors	Software and Services
Technology Hardware and Equipment	Textiles, Apparel and Luxury Goods
Electrical Equipment (limited to Solar Energy Systems)	

#### *OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employers, **Sierra Club, Coalition for Green Capital, or the Clean Energy Federal Credit Union**, is a party or represents a party. Under the terms of the Ethics Pledge, this recusal lasts for two years from the date that I joined federal service, or until January 31, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

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<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).



## ATTORNEY BAR OBLIGATIONS

Pursuant to my obligations under my bar rules, I recognize that I am obliged to protect the confidences of my former clients. I also understand that I cannot participate in any matter that is the same as or substantially related to the same specific party matter that I participated in personally and substantially, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics. Thus, I will not participate in the following matters:

CASE NAME:	CITATION:
Union of Concerned Scientists, <i>et al.</i> v. National Highway Traffic Safety Administration	No. 19-1230 (D.C. Cir.) (lead case)
Sierra Club, <i>et al.</i> v. Environmental Protection Agency, <i>et al.</i>	No. 19-1243 (D.C. Cir.) (consolidated)
Competitive Enterprise Institute, <i>et al.</i> v. National Highway Traffic Safety Administration, <i>et al.</i>	No. 20-1145 (D.C. Cir.) (lead case)
Natural Resources Defense Council, <i>et al.</i> v. Andrew R. Wheeler, <i>et al.</i>	No. 20-1168 (D.C. Cir.) (consolidated)
Truck Trailer Manufacturers Association v. Environmental Protection Agency, <i>et al.</i>	No. 16-1430 (D.C. Cir.)
American Lung Association, <i>et al.</i> v. Environmental Protection Agency, <i>et al.</i>	No. 19-1140 (D.C. Cir.) (lead case)
Appalachian Mountain Club, <i>et al.</i> v. Environmental Protection Agency	No. 19-1166 (D.C. Cir.) (consolidated)
Biogenic CO2 Coalition v. Environmental Protection Agency, <i>et al.</i>	No. 19-1185 (D.C. Cir.) (consolidated)
State of North Dakota v. Environmental Protection Agency	No. 15-1381 (D.C. Cir.)

## DIRECTIVE AND CONCLUSION

To avoid participating in matters from which I am recused, please direct them to the attention of **Ann Ferrio, Chief of Staff**, without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

cc: Elizabeth Shaw, Deputy Assistant Administrator  
Tomás Carbonell, Deputy Assistant Administrator for Stationary Sources  
Ann (Campbell) Ferrio, Chief of Staff  
Eunjung Kim, Special Assistant  
Justina Fugh, Director, Ethics Office



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

December 15, 2021

OFFICE OF  
LAND AND EMERGENCY  
MANAGEMENT

### MEMORANDUM

SUBJECT: Recusal Statement

FROM: Carlton Waterhouse  
Deputy Assistant Administrator

CARLTON  
WATERHOUSE

Digitally signed by  
CARLTON WATERHOUSE  
Date: 2021.12.15 13:12:08  
-05'00'

TO: Barry N. Breen  
Acting Assistant Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and have been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

#### *FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal financial conflict of interest law, 18 U.S.C. § 208(a), I may not participate personally and substantially in any particular matter having a direct and predictable effect on my financial interests, or the financial interests of a person or entity whose financial interests are imputed to me, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption as outlined in 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse and minor child; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner, or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised by OGC/Ethics that I have a financial interest in the **Howard University School of Law** in Washington, DC from which I have taken a two-year, unpaid leave of absence. Therefore, I may not participate personally and substantially in any particular matter that, to my knowledge, has a direct and predictable effect on the financial interests of Howard University School of Law unless I first obtain a written waiver or my participation is permitted by a regulatory exemption, including the exemption for employees on leave from institutions of higher learning allowing participation in certain matters of general applicability at 5 C.F.R. § 2640.203(b). This latter exemption allows me to participate in a particular matter of general applicability, such as a rulemaking, so long as it does not have a distinct effect on either of the institution other than as part of class.

#### *OBLIGATIONS UNDER EXECUTIVE ORDER 13989 (the Ethics Pledge)*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I have additional ethics

obligations with respect to the **National Resources Defense Council** and the **Environmental Law Institute** due to my former board memberships, and for **BARBRI, iLaw/BarBri Legal Ed,** and the **National Legal Aid and Defender Association**, for which I provided personal services. The Executive Order provides more restrictions than the federal ethics rules and require that I recuse myself from participating in EPA matters in which any of these entities is a party or represents a party for two years from my EPA appointment date, or **until February 2, 2023**, unless I receive a waiver of these provisions by the EPA Designated Agency Ethics Official after consultation with the White House.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards at 5 C.F.R. § 2635.502(a), I have a “covered relationship” with the **Howard University School of Law** for the period of my leave of absence and for one year thereafter. Therefore, I may not participate in a particular matter involving specific parties in which any of this entity is a party or represents a party during the time period of my recusal, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d).

#### *DIRECTIVE AND CONCLUSION*

To avoid participating in all of the matters outlined above from which I am recused, please direct them to the attention of Becky Brooks or Nick Hilosky without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

cc: Justina Fugh, Director, Ethics Office  
Becky Brooks, OLEM  
Nick Hilosky, OLEM  
Ruby Goldberg, OLEM

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<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF THE  
ADMINISTRATOR

### **MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Dan Utech  
Chief of Staff

Utech, Dan

Digitally signed by Utech,  
Dan  
Date: 2021.04.12  
11:31:07 -04'00'

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed.

#### *FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

Based on the current level of ownership, I understand that I am disqualified from participating personally and substantially in any particular matter that will have a direct and predictable effect upon any of the following entities as a specific party:

RECUSAL LIST - NAME OF COMPANY		
Donaldson Inc.	Intel	Paychex

Based on my ownership interest in Paychex, I also understand that I am recused from participating personally and substantially in any particular matter of general applicability that is focused in the following sector: **private sector payroll, human resources and benefits outsourcing services**. I have consulted with OGC/Ethics and been advised that my official duties as Chief of Staff are not expected to involve particular matters of general applicability affecting Paychex. Should a particular matter nevertheless arise that appears to be focused in this sector, then I will consult with OGC/Ethics before participation. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

#### *OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer – **Yale University** -- or any of my former clients -- the **Energy Foundation**, the **Center for Applied Environmental Law and Policy**, and **Clean Wisconsin** -- is a party or represents a party. For the purposes of the Executive Order, I had no other “former clients” to whom I provided consulting services while self-employed as a consultant, and my consultancy is in abeyance and not taking on any new clients. I understand that my recusals regarding Yale University; the Energy Foundation; the Center for Applied Environmental Law and Policy; and Clean Wisconsin will last for two years from the date that I joined federal service. These recusals will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *SCREENING ARRANGEMENT*

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Alison Cassady, Deputy Chief of Staff for Policy, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Deputy Chief of Staff for Policy without my knowledge or involvement.

If the Deputy Chief of Staff for Policy determines that a particular matter will directly involve any of the entities or issue areas on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with

OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates and a copy to Justina Fugh, Director, Ethics Office.

*UPDATE AS NECESSARY*

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Alison Cassady, Deputy Chief of Staff for Policy  
Dorien Blythers, Deputy Chief of Staff for Operations  
Wes Carpenter, Acting Deputy Chief of Staff  
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

OFFICE OF THE  
ADMINISTRATOR

**MEMORANDUM**

SUBJECT: Updated Recusal Statement

FROM: Dan Utech  
Chief of Staff

DAN UTECH

Digitally signed by DAN  
UTECH  
Date: 2021.08.05  
07:35:08 -04'00'

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed. This recusal statement supersedes my April 12, 2021 recusal statement.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer – **Yale University** -- or any of my former clients -- the **Energy Foundation**,



the **Center for Applied Environmental Law and Policy**, and **Clean Wisconsin** -- is a party or represents a party. For the purposes of the Executive Order, I had no other “former clients” to whom I provided consulting services while self-employed as a consultant, and my consultancy is in abeyance and not taking on any new clients. I understand that my recusals regarding Yale University; the Energy Foundation; the Center for Applied Environmental Law and Policy; and Clean Wisconsin will last for two years from the date that I joined federal service. These recusals will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *SCREENING ARRANGEMENT*

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Alison Cassady, Deputy Chief of Staff for Policy, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Deputy Chief of Staff for Policy without my knowledge or involvement.

If the Deputy Chief of Staff for Policy determines that a particular matter will directly involve any of the entities on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates and a copy to Justina Fugh, Director, Ethics Office.

#### *UPDATE AS NECESSARY*

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Alison Cassady, Deputy Chief of Staff for Policy  
Dorien Blythers, Deputy Chief of Staff for Operations  
Wes Carpenter, Acting Deputy Chief of Staff  
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

61 FORSYTH STREET, SW  
ATLANTA, GA 30303

**MEMORANDUM**

SUBJECT: Recusal Statement

DANIEL

FROM: Daniel Blackman  
Regional Administrator

BLACKMAN

Digitally signed by  
DANIEL BLACKMAN  
Date: 2022.07.01  
13:40:05 -04'00'

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This recusal statement formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

*Particular Matters Involving Specific Parties*

Given my relationships or financial holdings with the following entities, I am disqualified from participating personally and substantially in any particular matter that will have a direct and predictable effect upon them as a specific party:

RECUSAL LIST – SPECIFIC PARTY MATTERS
BookLogix
Conscious Animal, LLC
MOON Ultra, Inc.
Oculus VisionTech Inc.

### *Particular Matters of General Applicability*

Because of the current level of my financial ownership, I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

<b>RECUSAL LIST –SECTORS</b>	
Cyber-security and data protection	Mobile lighting accessories

### *OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which a former employer or former client is a party or represents a party. Set forth in the charts below are my former employers identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA. I understand that my recusal with these entities will last for two years from the date that I joined federal service. This recusal will end on **November 28, 2023**.

<b>Former Employers</b>
American Civil Liberties Union (ACLU)
The Martin Luther King, Jr. Center for Nonviolent Social Change
Russell Center for Innovation and Entrepreneurship
Sierra Club

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” I will consult with OGC/Ethics and the regional ethics counsel.

### *DIRECTIVE AND CONCLUSION*

To avoid participating in any of the matters from which I am recused, please refer those matters to the attention of the Deputy Regional Administrator, currently Fred Thompson serving in an acting capacity, without my knowledge or involvement. Therefore, I should not be sent or

<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

copied on substantive emails, attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions with regard to a particular matter covered by my refusal. Official actions on such matter should be made without my recommendation, knowledge, or involvement.

Any inquiries regarding the extent of my recusals should be directed to the Region's ethics team or OGC/Ethics. In the event that my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, then I will consult with OGC/Ethics and update my refusal statement accordingly.

cc: Janet McCabe, Deputy Administrator  
Dan Utech, Chief of Staff  
Fred Thompson, Acting Deputy Regional Administrator, Region 4  
John Nicholson, Chief of Staff, Region 4  
Leif Palmer, Regional Counsel, Region 4  
John Sheesley, Regional Ethics Counsel  
Justina Fugh, Director, Ethics Office



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 1**  
**5 Post Office Square, Suite 100**  
**Boston, MA 02109-3912**

**MEMORANDUM**

DATE: February 23, 2022

SUBJECT: Recusal Statement

FROM: David W. Cash  
Regional Administrator

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This recusal statement formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics should my financial situation change.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which my

former employers, **David Cash Climate and Energy Consulting, LLC** and **E4theFuture**, or any of my former clients, **EIT InnoEnergy** and **Energy Futures Initiative**, is a party or represents a party. For purposes of the Executive Order, I had no other “former clients” to whom I provided consulting services while self-employed as a consultant, and my consultancy is in abeyance and not taking on any new clients. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end on February 13, 2024.

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me for the University of Massachusetts Boston. The definition of “former employer” excludes an entity of a state government, including a state university.<sup>1</sup> Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers for the University of Massachusetts Boston.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>2</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with any former employer which is a state university. Therefore, I may not participate in a particular matter involving specific parties in which the **University of Massachusetts Boston** is a party or represents a party, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts until after February 4, 2023, which is one year from the date of my final resignation.

#### *DIRECTIVE AND CONCLUSION*

To ensure that I do not participate in any particular matters from which I am recused, please refer those matters to the attention of Deborah A. Szaro, Deputy Regional Administrator, without my knowledge or involvement. Therefore, I should not be sent or copied on substantive

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<sup>1</sup> See Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

<sup>2</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

emails, attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions with regard to a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to the Region's ethics team or OGC/Ethics. In the event that my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, then I will consult with OGC/Ethics and update my recusal statement accordingly.

A handwritten signature in blue ink, appearing to read "David W. Cash".

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David W. Cash

cc: Dan Utech, Chief of Staff  
Deborah Szaro, Deputy Regional Administrator  
Carl Dierker, Regional Counsel  
LeAnn Jensen, Regional Ethics Counsel  
Justina Fugh, Director, Ethics Office





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 5**  
**77 WEST JACKSON BLVD**  
**CHICAGO, IL 60604**

**MEMORANDUM**

**SUBJECT:** Recusal Statement

**FROM:** Debra Shore  
Regional Administrator

**DEBRA  
SHORE**

Digitally signed by DEBRA  
SHORE  
Date: 2022.01.24 21:01:56  
-06'00'

**TO:** Michael S. Regan  
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating in certain matters in which I have a financial interest or a former business relationship.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal conflict of interest law, 18 U.S.C. § 208(a), I will not participate personally and substantially<sup>1</sup> in any particular matter<sup>2</sup> that will have a direct and predictable effect on my financial interests or the financial interests of a person whose interests are imputed to me unless I first obtain a written conflict of interest waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). The interests of the following persons are imputed to me: my spouse or my minor child; a general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

<sup>1</sup> To participate “*personally*” means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate “*substantially*” means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(2).

<sup>2</sup> A “*particular matter*” includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(1).

*Particular matters involving specific parties*<sup>3</sup>:

Given the value of my financial interests, I must disqualify from participating personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the following companies as a specific party:

**Adobe**  
**Apple**  
**AT&T**  
**Alphabet (Google)**  
**Comcast**  
**Home Depot**  
**IBM**  
**Liberty Media Corp**  
**Nexstar Media Group**  
**Sony Group Corp**  
**Walt Disney**  
**Xylem**

**All of the underlying holdings of the [Vanguard Healthcare Index Fund \(Admiral Shares\)](#) sector fund**

*Particular Matters of General Applicability*<sup>4</sup>

Based on the value of my current financial interests, I am disqualified from participating personally and substantially in any particular matter of general applicability, such as rulemaking, having a direct and predictable effect on my financial interests as a member of the following industry sectors:

**Cable/internet communications services**  
**Consumer technology and electronics**  
**Computer hardware & software**  
**Consumer staples**  
**Healthcare**  
**Hospitality/cruise lines**  
**Information technology**  
**Internet content & media/entertainment**  
**Television & satellite radio communications services**  
**Water technology & industrial machinery**

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<sup>3</sup> *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. *See* 5 C.F.R. § 2640.102(l).

<sup>4</sup> *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties. *See* 5 C.F.R. § 2640.102(m).

In addition, I will not participate in particular matters that will affect the ability or willingness of the **Metropolitan Water Reclamation District of Chicago** to pay my defined benefit plan obligations.

#### *Divestiture*

In order to avoid even the appearance of a conflict of interest and fulfill my obligations to the best of my ability, I agree to divest my shares of Xylem Corporation within 90 days of the date of this recusal statement. Once the divestiture is complete, I will update my recusal statement and comply with the required public financial disclosure reporting requirements.

#### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality regulations at 5 C.F.R. § 2635.502(b), I have a “covered relationship” with my former employer, the **Metropolitan Water Reclamation District of Chicago**, for one year after I last served as an employee. Therefore, I may not participate personally and substantially in any particular matter involving specific parties in which the **Metropolitan Water Reclamation District of Chicago** is a party or represents a party for one year after I last served as a Commissioner, or until **October 23, 2022**, unless I am otherwise authorized to participate pursuant to the standards in 5 C.F.R. § 2635.502(d).

#### *DIRECTIVE AND CONCLUSION*

In order to ensure that I do not participate in particular matters from which I am recused, I am asking the Deputy Regional Administrator to act on such matters without my knowledge or involvement. Therefore, please do not send or copy me on substantive emails, request that I attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions with regard to a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to the Regional Counsel or OGC/Ethics.

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Dan Utech, Chief of Staff  
Cheryl Newton, Deputy Regional Administrator  
Robert Kaplan, Regional Counsel  
Alfred S. Saucedo, Chief of Staff, Region 5  
Ann Coyle, Regional Ethics Official  
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BLVD  
CHICAGO, IL 60604

**MEMORANDUM**

SUBJECT: Revised Recusal Statement

FROM: DEBRA  
Debra Shore SHORE  
Regional Administrator

Digitally signed by  
DEBRA SHORE  
Date: 2022.02.14  
12:29:00 -06'00'

TO: Michael S. Regan  
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum updates my prior recusal statement dated January 24, 2022, to include my obligations under the Biden Ethics Pledge regarding two former board positions and the impartiality restrictions for another entity for which I am continuing to serve with the approval of the Alternate Designated Ethics Official in consultation with the Agency's Chief of Staff.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal conflict of interest law, 18 U.S.C. § 208(a), I will not participate personally and substantially<sup>1</sup> in any particular matter<sup>2</sup> that will have a direct and predictable effect on my financial interests or the financial interests of a person whose interests are imputed to me unless I first obtain a written conflict of interest waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). The interests of the following persons are imputed to me: my spouse or my minor child; a general partner of a partnership in which I am a limited or general partner; any organization in which I

<sup>1</sup> To participate "*personally*" means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate "*substantially*" means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(2).

<sup>2</sup> A "*particular matter*" includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(1).

serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

*Particular matters involving specific parties*<sup>3</sup>

Given the value of my financial interests, I must disqualify from participating personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the following companies as a specific party:

**Adobe**  
**Apple**  
**AT&T**  
**Alphabet (Google)**  
**Comcast**  
**Home Depot**  
**IBM**  
**Liberty Media Corp**  
**Nexstar Media Group**  
**Sony Group Corp**  
**Walt Disney**  
**Xylem**

**All of the underlying holdings of the [Vanguard Healthcare Index Fund \(Admiral Shares\)](#) sector fund**

*Particular Matters of General Applicability*<sup>4</sup>

Based on the value of my current financial interests, I am disqualified from participating personally and substantially in any particular matter of general applicability, such as rulemaking, having a direct and predictable effect on my financial interests as a member of the following industry sectors:

**Cable/internet communications services**  
**Consumer technology and electronics**  
**Computer hardware & software**  
**Consumer staples**  
**Healthcare**  
**Hospitality/cruise lines**  
**Information technology**  
**Internet content & media/entertainment**

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<sup>3</sup> *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. *See* 5 C.F.R. § 2640.102(l).

<sup>4</sup> *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties. *See* 5 C.F.R. § 2640.102(m).

**Television & satellite radio communications services  
Water technology & industrial machinery**

*Divestiture*

In order to avoid even the appearance of a conflict of interest and fulfill my obligations to the best of my ability, I agree to divest my shares of Xylem Corporation within 90 days of the date of this recusal statement. Once the divestiture is complete, I will update my recusal statement and comply with the required public financial disclosure reporting requirements.

*OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality regulations at 5 C.F.R. § 2635.502(b), I have a “covered relationship” with my former employer, the **Metropolitan Water Reclamation District of Chicago**, for one year after I last served as an employee. Therefore, I may not participate personally and substantially in any particular matter involving specific parties in which the **Metropolitan Water Reclamation District of Chicago** is a party or represents a party for one year after I last served as a Commissioner, or until **October 23, 2022**, unless I am otherwise authorized to participate pursuant to the standards in 5 C.F.R. § 2635.502(d).

I am a member of the **University of Chicago’s Women’s Board** and, therefore, I may not participate in any particular matter involving specific parties in which the **University of Chicago** is a party or represents a party unless I am otherwise authorized to participate pursuant to the standards in 5 C.F.R. § 2635.502(d).

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989 (The Biden Ethics Pledge)*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any matter involving specific parties in which my former employers<sup>5</sup> or former clients is a party or represents a party. I understand that my recusals regarding these entities will last for two years from the date that I joined federal service and will end after **October 24, 2023**. These entities are the **Great Lakes Protection Fund** and the **Illinois Women’s Institute for Leadership Training Academy**.

For the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting

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<sup>5</sup> “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

even if one of the stakeholders is a former employer or former client.”<sup>6</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *DIRECTIVE AND CONCLUSION*

In order to ensure that I do not participate in particular matters from which I am recused, I am asking the Deputy Regional Administrator to act on such matters without my knowledge or involvement. Therefore, please do not send or copy me on substantive emails, request that I attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions with regard to a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to the Regional Counsel or OGC/Ethics.

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Dan Utech, Chief of Staff  
Cheryl Newton, Deputy Regional Administrator  
Alfred S. Saucedo, Chief of Staff  
Robert Kaplan, Regional Counsel  
Ann Coyle, Regional Ethics Official  
Justina Fugh, Director, Ethics Office

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<sup>6</sup> See OGE Advisory DO-09-011 (3/26/09).





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BLVD  
CHICAGO, IL 60604

**MEMORANDUM**

SUBJECT: Second Revised Recusal Statement

FROM: Debra Shore  
Regional Administrator

DEBRA  
SHORE

Digitally signed by  
DEBRA SHORE  
Date: 2022.03.16  
15:51:47 -05'00'

TO: Michael S. Regan  
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum updates my prior recusal statement dated February 14, 2022, to remove two companies, AT&T and Nexstar Media Group, in which I no longer have a financial interest and to add a new company, T-Mobile, to the list of specific party matters from which I am recused.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal conflict of interest law, 18 U.S.C. § 208(a), I will not participate personally and substantially<sup>1</sup> in any particular matter<sup>2</sup> that will have a direct and predictable effect on my financial interests or the financial interests of a person whose interests are imputed to me unless I first obtain a written conflict of interest waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). The interests of the following persons are imputed to me: my spouse or my minor child; a general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization

<sup>1</sup> To participate “personally” means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate “substantially” means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(2).

<sup>2</sup> A “particular matter” includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(1).

with which I am negotiating or have an arrangement concerning prospective employment.

*Particular matters involving specific parties*<sup>3</sup>

Given the value of my financial interests, I must disqualify from participating personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the following companies as a specific party:

**Adobe**  
**Alphabet (Google)**  
**Apple**  
**Comcast**  
**Home Depot**  
**IBM**  
**Liberty Media Corp**  
**Sony Group Corp**  
**T-Mobile**  
**Walt Disney**  
**Xylem**

**All the underlying holdings of the [Vanguard Healthcare Index Fund \(Admiral Shares\)](#) sector fund**

*Particular Matters of General Applicability*<sup>4</sup>

Based on the value of my current financial interests, I am disqualified from participating personally and substantially in any particular matter of general applicability, such as rulemaking, having a direct and predictable effect on my financial interests as a member of the following industry sectors:

**Cable/internet communications services**  
**Consumer technology and electronics**  
**Computer hardware & software**  
**Consumer staples**  
**Healthcare**  
**Hospitality/cruise lines**  
**Information technology**  
**Internet content & media/entertainment**  
**Television & satellite radio communications services**  
**Water technology & industrial machinery**

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<sup>3</sup> *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. *See* 5 C.F.R. § 2640.102(l).

<sup>4</sup> *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties. *See* 5 C.F.R. § 2640.102(m).

## *Divestiture*

To avoid even the appearance of a conflict of interest and fulfill my obligations to the best of my ability, I agree to divest my shares of Xylem Corporation within 90 days of the date of my first recusal statement, which I signed on January 24, 2022. Once the divestiture is complete, I will update this recusal statement and comply with the required public financial disclosure reporting requirements.

## *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality regulations at 5 C.F.R. § 2635.502(b), I have a “covered relationship” with my former employer, the **Metropolitan Water Reclamation District of Chicago**, for one year after I last served as an employee. Therefore, I may not participate personally and substantially in any particular matter involving specific parties in which the **Metropolitan Water Reclamation District of Chicago** is a party or represents a party for one year after I last served as a commissioner, or until **October 23, 2022**, unless I am otherwise authorized to participate pursuant to the standards in 5 C.F.R. § 2635.502(d).

I am a member of the **University of Chicago’s Women’s Board** and, therefore, I may not participate in any particular matter involving specific parties in which the **University of Chicago** is a party or represents a party unless I am otherwise authorized to participate pursuant to the standards in 5 C.F.R. § 2635.502(d).

## *OBLIGATIONS UNDER EXECUTIVE ORDER 13989 (The Biden Ethics Pledge)*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any matter involving specific parties in which my former employers<sup>5</sup> or former clients is a party or represents a party. I understand that my recusals regarding these entities will last for two years from the date that I joined federal service and will end after **October 24, 2023**. These entities are the **Great Lakes Protection Fund** and the **Illinois Women’s Institute for Leadership Training Academy**.

For the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>6</sup> Should a question arise

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<sup>5</sup> “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

<sup>6</sup> See OGE Advisory DO-09-011 (3/26/09).

as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *DIRECTIVE AND CONCLUSION*

To ensure that I do not participate in particular matters from which I am recused, I am asking the Deputy Regional Administrator to act on such matters without my knowledge or involvement. Therefore, please do not send or copy me on substantive emails, request that I attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions about a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to the Regional Counsel or OGC/Ethics.

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Dan Utech, Chief of Staff  
Cheryl Newton, Deputy Regional Administrator  
Alfred S. Saucedo, Chief of Staff  
Robert Kaplan, Regional Counsel  
Ann Coyle, Regional Ethics Official  
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BLVD  
CHICAGO, IL 60604

**MEMORANDUM**

SUBJECT: Third Revised Recusal Statement

FROM: Debra Shore  
Regional Administrator & Great Lakes National Program Manager

TO: Michael S. Regan  
Administrator

DEBRA  
SHORE

Digitally signed by  
DEBRA SHORE  
Date: 2022.04.20  
15:13:33 -04'00'

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum updates my prior recusal statement dated March 16, 2022, to remove one company, Xylem, and one industrial sector—water technology & industrial machinery—in which I no longer have a financial interest.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal conflict of interest law, 18 U.S.C. § 208(a), I will not participate personally and substantially<sup>1</sup> in any particular matter<sup>2</sup> that will have a direct and predictable effect on my financial interests or the financial interests of a person whose interests are imputed to me unless I first obtain a written conflict of interest waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). The interests of the following persons are imputed to me: my spouse or my minor child; a general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

<sup>1</sup> To participate “*personally*” means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate “*substantially*” means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation, or the rendering of advice in a particular matter. *See* 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(2).

<sup>2</sup> A “*particular matter*” includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. *See* 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(1).

*Particular matters involving specific parties*<sup>3</sup>

Given the value of my financial interests, I must disqualify from participating personally and substantially in any particular matter that has a direct and predictable effect on the financial interests of the following companies as a specific party:

**Adobe**  
**Alphabet (Google)**  
**Apple**  
**Comcast**  
**Home Depot**  
**IBM**  
**Liberty Media Corp**  
**Sony Group Corp**  
**T-Mobile**  
**Walt Disney**

**All the underlying holdings of the [Vanguard Healthcare Index Fund \(Admiral Shares\)](#) sector fund**

*Particular Matters of General Applicability*<sup>4</sup>

Based on the value of my current financial interests, I am disqualified from participating personally and substantially in any particular matter of general applicability, such as rulemaking, having a direct and predictable effect on my financial interests as a member of the following industry sectors:

**Cable/internet communications services**  
**Consumer technology and electronics**  
**Computer hardware & software**  
**Consumer staples**  
**Healthcare**  
**Hospitality/cruise lines**  
**Information technology**  
**Internet content & media/entertainment**  
**Television & satellite radio communications services**

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<sup>3</sup> *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. *See* 5 C.F.R. § 2640.102(l).

<sup>4</sup> *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons but does not involve specific parties. *See* 5 C.F.R. § 2640.102(m).

## *Divestiture*

To avoid even the appearance of a conflict of interest and fulfill my obligations to the best of my ability, I agree to divest my shares of Xylem Corporation within 90 days of the date of my first recusal statement, which I signed on January 24, 2022. Once the divestiture is complete, I will update this recusal statement and comply with the required public financial disclosure reporting requirements.

## *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality regulations at 5 C.F.R. § 2635.502(b), I have a “covered relationship” with my former employer, the **Metropolitan Water Reclamation District of Chicago**, for one year after I last served as an employee. Therefore, I may not participate personally and substantially in any particular matter involving specific parties in which the **Metropolitan Water Reclamation District of Chicago** is a party or represents a party for one year after I last served as a commissioner, or until **October 23, 2022**, unless I am otherwise authorized to participate pursuant to the standards in 5 C.F.R. § 2635.502(d).

I am a member of the **University of Chicago’s Women’s Board** and, therefore, I may not participate in any particular matter involving specific parties in which the **University of Chicago** is a party or represents a party unless I am otherwise authorized to participate pursuant to the standards in 5 C.F.R. § 2635.502(d).

## *OBLIGATIONS UNDER EXECUTIVE ORDER 13989 (The Biden Ethics Pledge)*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any matter involving specific parties in which my former employers<sup>5</sup> or former clients is a party or represents a party. I understand that my recusals regarding these entities will last for two years from the date that I joined federal service and will end after **October 24, 2023**. These entities are the **Great Lakes Protection Fund** and the **Illinois Women’s Institute for Leadership Training Academy**.

For the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>6</sup> Should a question arise

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<sup>5</sup> “Former employer” is any person for whom the appointee has within the 2 years prior to the date of his or her appointment served as an employee, officer, director, trustee, or general partner, except that “former employer” does not include any executive agency or other entity of the Federal Government, State or local government, the District of Columbia, Native American tribe, any United States territory or possession, or any international organization in which the United States is a member state.

<sup>6</sup> See OGE Advisory DO-09-011 (3/26/09).



as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *DIRECTIVE AND CONCLUSION*

To ensure that I do not participate in particular matters from which I am recused, I am asking the Deputy Regional Administrator to act on such matters without my knowledge or involvement. Therefore, please do not send or copy me on substantive emails, request that I attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions about a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to the Regional Counsel or OGC/Ethics.

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Dan Utech, Chief of Staff  
Cheryl Newton, Deputy Regional Administrator  
Alfred S. Saucedo, Chief of Staff  
Robert Kaplan, Regional Counsel  
Ann Coyle, Regional Ethics Official  
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

May 11, 2021

OFFICE OF  
RESEARCH AND DEVELOPMENT

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: H. Christopher Frey  
Deputy Assistant Administrator for Science Policy

A handwritten signature in black ink, appearing to read "HCF", is placed to the right of the "FROM:" line.

TO: Jennifer Orme-Zavaleta  
Acting Assistant Administrator for Research and Development

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and have been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal financial conflict of interest law, 18 U.S.C. § 208(a), I may not participate personally and substantially in any particular matter having a direct and predictable effect on my financial interests, or the financial interests of a person or entity whose financial interests are imputed to me, unless I first obtain a written waiver pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption as outlined in 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: my spouse and minor child; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner, or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have been advised by OGC/Ethics that I have a financial interest in **North Carolina State University (NC State)** and the **Hong Kong University of Science & Technology (HKUST)** from which I have taken a two-year, unpaid leave of absence. Therefore, I may not participate personally and substantially in any particular matter that, to my knowledge, has a direct and predictable effect on the financial interests of either entity unless I first obtain a written waiver or my participation is permitted by a regulatory exemption, including the exemption for employees on leave from institutions of higher learning allowing participation in certain matters of general applicability at 5 C.F.R. § 2640.203(b). This latter exemption allows me to participate in a particular matter of general applicability, such as a rulemaking, so long as it does not have a distinct effect on either of the institution other than as part of class.

## *OBLIGATIONS UNDER EXECUTIVE ORDER 13989 (the Ethics Pledge)*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I have additional ethics obligations with respect to the **Health Effects Institute**, which is a former client of my consulting firm, the Energy, Air, and Risk Associates, LLC<sup>1</sup>, as well as **Emisia SA (Greece)**, and the **Hong Kong Environmental Protection Department**, for which I provided personal services. The Executive Order provides more restrictions than the federal ethics rules and require that I recuse myself from participating in EPA matters in which any of these entities is a party or represents a party for two years from my EPA appointment date, or **until January 31, 2023**, unless I receive a waiver of these provisions by the EPA Designated Agency Ethics Official after consultation with the White House.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, then I could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>2</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

## *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards at 5 C.F.R. § 2635.502(a), I have a “covered relationship” with **NC State** and the **HKUST** during the period of my leaves of absence and for one year thereafter. Therefore, I may not participate in a particular matter involving specific parties in which any of these entities is a party or represents a party during the time period of my recusal, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d).

## *DIRECTIVE AND CONCLUSION*

To avoid participating in all of the matters outlined above from which I am recused, please direct them to the attention of **Elizabeth Blackburn, Chief of Staff**, without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

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<sup>1</sup> During my tenure at EPA, I will not accept consulting work for my sole proprietorship or through Energy, Air, and Risk Associates, LLC of which I am the sole member.

<sup>2</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

cc: Justina Fugh, Director, Ethics Office  
Elizabeth Blackburn, Chief of Staff  
Chris Robbins  
Bruce Rodan  
Carolyn Hubbard  
Louis D'Amico  
Pradnya Bhandari  
Emily Trentacoste  
Rachel Matney  
Mark McPherson  
Anna Hassan  
Nathan Gentry



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

April 8, 2021

OFFICE OF  
AIR AND RADIATION

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Joseph Goffman  
Acting Assistant Administrator

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Harvard University**, is a party or represents a party. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."<sup>1</sup> Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

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<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

## FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

### *Particular Matters Involving Specific Parties*

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that affects any of following entities as a specific party:

RECUSAL LIST – SPECIFIC PARTY MATTERS			
Abbot Laboratories	Abbvie	Accenture PLC	Agilent Technologies
Alphabet Inc	Altria Group	Amazon	American Express
Ameriprise Financial	Apple, Inc.	Arthur J Gallagher	AT&T
Becton Dickinson	Broadcom Inc	Canadian National RY	Centene Corp
Champion X Corp	Charter Communications	Cisco Systems	Colgate Palmolive
Comcast	Costco	Danaher Corp	Deere & Co.
Discover Financial	Disney	Dollar Tree Inc	Dover Corp
Eaton Corp	Ecolab Inc.	Facebook	Fidelity
First Rep Bank	Fortive Corp.	Glaxo Smith Kline	Home Depot
IBM	Intel Corp	Johnson & Johnson	JP Morgan Chase
Lab Co of America Holding	Markel Corp	Martin Marietta Materials Inc	Meditronic PLC
Merck & Co.	Mettler Toledo Intl	Microsoft	Mondelez International
Monster Beverage	Nestle S.A.	Nike	Novartis AG
NVIDIA Corp	Omnicom Group	PayPal	PepsiCo
Pfizer Inc.	Philip Morris	Proctor & Gamble Co.	PNC Financial
Qualcomm INC	Roche Holding AG	Roper Technologies	SalesForce
Sherwin Williams	Skyworks Solutions	Spotify	Starbucks Corp
State Street	Texas Instruments	TJX	Truist Financial Corp
United Health Group	US Bancorp	Verizon Comm	Visa
Wells Fargo	Zoetis, Inc.		

### *Particular Matters of General Applicability*

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

RECUSAL LIST – INDIVIDUAL SECTORS		
Advertising	Apparel	Banking
Communications Equipment	Credit Services	Discount Stores
Entertainment	Farm & Heavy Construction Machinery	Footwear
Healthcare Plans	Home Improvement Retail	Household & Personal Products
Information Technology Services	Insurance	Internet Content
Internet Retail	Non-Alcoholic Beverages	Packaged Foods
Paint	Pharmaceuticals & Drug Manufacturing	Restaurants
Scientific & Technical Instruments	Semiconductors	Snack Food
Snack Food	Software	Specialty Chemicals
Specialty Industrial Machinery	Specialty Industrial Machinery	Telecom Services
Tobacco		

### *Corporate Bonds*

I am recused from participating in any particular matter that will have a direct and predictable financial effect upon the ability and willingness of the following bond issuers to honor their obligations or that will affect their bond ratings:

RECUSAL LIST – BONDS			
Amgen, Inc.	Anthem, Inc.	Apple, Inc.	Comcast Corporation
General Dynamics Corporation	Morgan Stanley	Starbucks Corporation	State Street Corporation

### *Certificate of Divestiture*

I intend to seek a certificate of divestiture and will update this recusal statement when my financial situation changes.



### *SCREENING ARRANGEMENT*

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Ann Ferrio, Chief of Staff, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Chief of Staff without my knowledge or involvement.

If the Chief of Staff determines that a particular matter will directly involve any of the entities or issue areas on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates and a copy to Justina Fugh, Director, Ethics Office.

### *UPDATE AS NECESSARY*

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Elizabeth Shaw, Deputy Assistant Administrator  
Tomás Carbonell, Deputy Assistant Administrator for Stationary Sources  
Alejandra Nunez, Deputy Assistant Administrator for Mobile Sources  
Ann (Campbell) Ferrio, Chief of Staff  
Eunjung Kim, Special Assistant  
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

OFFICE OF  
AIR AND RADIATION

**MEMORANDUM**

SUBJECT: Updated Recusal Statement

FROM: Joseph Goffman  
Acting Assistant Administrator

JOSEPH  
GOFFMAN

Digitally signed by  
JOSEPH GOFFMAN  
Date: 2021.06.30  
12:48:36 -04'00'

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed. This recusal statement replaces and supersedes the recusal statement I signed on April 8, 2021.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **Harvard University**, is a party or represents a party. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."<sup>1</sup> Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

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<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

## *FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

### *Particular Matters Involving Specific Parties*

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that affects any of following entities as a specific party:

RECUSAL LIST – SPECIFIC PARTY MATTERS			
Abbot Laboratories	Abbvie	Accenture PLC	Agilent Technologies
Alphabet Inc	Altria Group	Amazon	American Express
Ameriprise Financial	Apple, Inc.	Arthur J Gallagher	AT&T
Becton Dickinson	Centene Corp	Charter Communications	Cisco Systems
Colgate Palmolive	Comcast	Costco	Danaher Corp
Deere & Co.	Discover Financial	Disney	Dollar Tree Inc
Facebook	Fidelity	First Rep Bank	Glaxo Smith Kline
IBM	Johnson & Johnson	JP Morgan Chase	Lab Co of America Holding
Markel Corp	Martin Marietta Materials Inc	Meditronic PLC	Merck & Co.
Mettler Toledo Intl	Microsoft	Mondelez International	Monster Beverage
Nestle S.A.	Nike	Novartis AG	Omnicom Group
PayPal	PepsiCo	Pfizer Inc.	Philip Morris
Proctor & Gamble Co.	PNC Financial	Roche Holding AG	SalesForce
Sherwin Williams	Spotify	Starbucks Corp	State Street
TJX	Truist Financial Corp	United Health Group	US Bancorp
Verizon Comm	Visa	Wells Fargo	Zoetis, Inc.

### *Particular Matters of General Applicability*

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

RECUSAL LIST – INDIVIDUAL SECTORS		
Agricultural & Farm Machinery	Apparel, Accessories, & Footwear	Banks
Commodity Chemicals (Paint)	Construction Machinery & Heavy Trucks	Construction Materials
Cruise lines	Diversified Financials	Food & Staples Retailing
Healthcare Equipment & Services	Household & Personal Products	Household Appliances (lawn & garden tools)
Insurance	Internet & Direct Marketing Retail	Logistics
Media & Entertainment (including interactive media and services, and advertising)	Non-Alcoholic Beverages	Packaged Foods & Meats (snack food)
Pharmaceuticals, Biotechnology, & Life Sciences	Professional Services	Software & Services
Technology Hardware & Equipment	Telecommunication Services	Tobacco

### *Corporate Bonds*

I am recused from participating in any particular matter that will have a direct and predictable financial effect upon the ability and willingness of the following bond issuers to honor their obligations or that will affect their bond ratings:

RECUSAL LIST – BONDS			
Amgen, Inc.	Anthem, Inc.	Apple, Inc.	Comcast Corporation
General Dynamics Corporation	Morgan Stanley	Starbucks Corporation	State Street Corporation

### *SCREENING ARRANGEMENT*

In order to ensure that I do not participate in matters relating to any of the entities listed above, I will instruct Ann Ferrio, Chief of Staff, to assist in screening EPA matters directed to my attention that involve my former employer or my former clients. All inquiries and comments involving the entities or issue areas on my recusal list should be directed to the Chief of Staff without my knowledge or involvement.

If the Chief of Staff determines that a particular matter will directly involve any of the entities or issue areas on my recusal list, then she will refer it for action or assignment to another, without my knowledge or involvement. In the event that she is unsure whether an issue is a particular matter from which I am recused, then she will consult with OGC/Ethics for a determination. I will provide a copy of this memorandum to my principal subordinates and a copy to Justina Fugh, Director, Ethics Office.

### *UPDATE AS NECESSARY*

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Elizabeth Shaw, Deputy Assistant Administrator  
Tomás Carbonell, Deputy Assistant Administrator for Stationary Sources  
Alejandra Nunez, Deputy Assistant Administrator for Mobile Sources  
Ann (Campbell) Ferrio, Chief of Staff  
Eunjung Kim, Special Assistant  
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8  
1595 WYNKOOP STREET  
DENVER, CO 80202

**MEMORANDUM**

SUBJECT: Recusal Statement  
KATHLEEN  
FROM: KC Becker BECKER  
Regional Administrator  
TO: Michael S. Regan  
Administrator

Digitally signed by  
KATHLEEN BECKER  
Date: 2022.01.10  
07:56:50 -07'00'

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This recusal statement formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

*Particular Matters Involving Specific Parties*

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that will have a direct and predictable effect upon any of the following entities as a specific party:

RECUSAL LIST – SPECIFIC PARTY MATTERS
Apple
Improper City (coffee shop)
Rowdy Mermaid (kombucha company)

### *Particular Matters of General Applicability*

Because of the current level of my financial ownership, I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

<b>RECUSAL LIST –SECTORS</b>	
Agriculture – limited to citrus growers and producers	
Beverages	Media & Entertainment
Electric and self-driving cars	Semiconductors
Food & Staples Retailing	Software & Services
Information Technology	Technology Hardware & Equipment

### *OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which a former employer or former client is a party or represents a party. Set forth in the charts below are my former employer and former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA.<sup>1</sup> I understand that my recusal with these entities will last for two years from the date that I joined federal service. This recusal will end on **November 29, 2023**.

<b>Former Employer</b>	
Wilkinson Barker Knauer, LLP	
<b>Former Clients</b>	
American Broadband	Next Generation Cooperative Alliance
Comcast	Public Service of Colorado, Inc.
Leeward Renewable Energy, LLC	Southern Colorado Economic Development District

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former

<sup>1</sup> For any former client that is not listed, I understand that I am personally obliged not to participate in specific party matters involving that former client for the duration of my ethics obligations.



client.”<sup>2</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with another of my former employers, the State of Colorado’s House of Representatives. On November 29, 2021, the EPA’s Alternate Designated Agency Ethics Official issued an impartiality determination that authorizes me to participate as Regional Administrator in particular matters that involve the State of Colorado, but not on any of the same specific party matters I worked on personally and substantially while serving in the elected position. *See* attached impartiality determination.

### *ATTORNEY BAR OBLIGATIONS*

In addition to the pledge restrictions involving my former employer and clients, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I understand that I am restricted from switching sides in litigation in which I participated in or provided counsel or that is the same as or substantially related to the same specific party matter in which I previously participated personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics.

### *DIRECTIVE AND CONCLUSION*

To avoid participating in any of the matters from which I am recused, please refer those matters to the attention of Deb Thomas, Deputy Regional Administrator, without my knowledge or involvement. In the event that my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, then I will consult with OGC/Ethics and update my recusal statement accordingly.

Attachment

cc: Deb Thomas, Deputy Regional Administrator  
 KC Schefski, Regional Counsel  
 Michael Gleason, Regional Ethics Counsel  
 Brian Joffe, Regional Ethics Counsel  
 Justina Fugh, Director, Ethics Office

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<sup>2</sup> *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

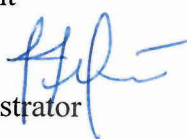


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

February 14, 2022

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Lisa F. Garcia   
Regional Administrator

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This recusal statement formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics should my financial situation change.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which a former employer is a party or represents a party. Set forth in the chart below are my former employers. I understand that my recusal with these entities will last for two years from the date that I joined federal service. This recusal will end on **November 29, 2023**.

Former Employers	
Grist Magazine	The Fund for New Jersey
El Puente	The Nature Conservancy
Eastern Environmental Law Center	The Trust for Governor's Island

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me for the Palisades Interstate Park Commission. The definition of "former employer" excludes an entity of a state government.<sup>1</sup> Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers for the Palisades Interstate Park Commission.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."<sup>2</sup> Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

#### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards, I understand that I have a "covered relationship" with any former employer which is an entity of a state government. Therefore, I may not participate in a particular matter involving specific parties in which the **Palisades Interstate Park Commission** is a party or represents a party, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts until after November 29, 2022, which is one year after I resigned from the Board.

I also have a "covered relationship" with my spouse's current employer, the City of New

<sup>1</sup> See Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

<sup>2</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

York, but neither my spouse nor his office will have any environmental issues or matters that will come before the Agency. Thus, on December 16, 2021, the EPA's Alternate Designated Agency Ethics Official issued an impartiality determination that authorizes me to participate in particular matters in which the City of New York is a party.

#### *ATTORNEY BAR OBLIGATIONS*

In addition to the pledge restrictions involving my former employer and clients, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I understand that I am restricted from switching sides in litigation in which I participated in or provided counsel or that is the same as or substantially related to the same specific party matter in which I previously participated personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics.

#### *DIRECTIVE AND CONCLUSION*

To ensure that I do not participate in any particular matters from which I am recused, please refer those matters to the attention of Walter Mugdan, Deputy Regional Administrator, without my knowledge or involvement. Therefore, I should not be sent or copied on substantive emails, attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions with regard to a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to the Region's ethics team or OGC/Ethics. In the event that my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, then I will consult with OGC/Ethics and update my recusal statement accordingly.

cc: Dan Utech, Chief of Staff  
Walter Mugdan, Deputy Regional Administrator  
Paul Simon, Acting Regional Counsel  
Eduardo Gonzalez, Regional Ethics Counsel  
Justina Fugh, Director, Ethics Office





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

EngelmanLado, Marianne  
Digitally signed by  
EngelmanLado, Marianne  
Date: 2021.06.30  
17:03:47 -04'00'

TO: Melissa Hoffer  
Acting General Counsel

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which a former employer or former client is a party or represents a party. Set forth in the charts below are my former employers and former clients identified in consultation with OGC/Ethics that have or may have environmental interests that could potentially arise with respect to my duties here at EPA.<sup>1</sup> I understand that my recusal with these entities will last for two years from the date that I joined federal service. This recusal will end **January 31, 2023**.

Former Employer
Vermont Law School Yale University Poverty & Race Research Action Council WE ACT for Environmental Justice African American Policy Forum Center for Public Representation

<sup>1</sup> For any former client that is not listed, I understand that I am personally obliged not to participate in specific party matters involving that former client for the duration of my ethics obligations.

Former Client <sup>2</sup>
<p>Ashurst Bar/Smith Community Organization          Californians for Renewable Energy          Center for Whole Communities          Citizens for Alternatives to Radioactive Dumping          Clean Power Lake County          Community Action Works          Concerned Citizens of West Baden Community          EarthJustice          Friends of the Earth          North Carolina Climate Solutions Coalition          North Carolina Environmental Justice Network          REACH          Sierra Club          St. Croix Environmental Association Limetree Bay SEA          St. Francis Prayer Center          Waterkeeper Alliance</p>

The Executive Order provides more restrictions than the federal ethics rules, but I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me for my former client, the University of Vermont. The definition of “former employer” excludes an entity of a state government, including a state university.<sup>3</sup> Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former clients for the University of Vermont.

On April 14, 2021, EPA’s Designated Agency Ethics Official, in consultation with the Counsel to the President, granted me a limited waiver of the provisions of Section 1, Paragraph 2 of Executive Order 13989 for one of my former clients, the Natural Resources Defense Council (NRDC). Similarly, on June 24, 2021, EPA’s Alternate Designated Agency Ethics Official issued an impartiality determination with respect to my former client, NRDC, under 5 C.F.R. 2635.502(d). I am now authorized to participate in specific party matters arising at EPA in which my former client, NRDC, is a party or represents a party, provided that I did not previously participate personally and substantially in that same matter for NRDC or any other party. *See Attachments.*

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<sup>2</sup> Natural Resources Defense Council (NRDC) is not included here as a “former client” because of the April 14, 2021 Ethics Pledge waiver that I received, as well as the June <date>, 2021 impartiality determination. I was, however, recused from participating in specific party matters in which NRDC was a party from my entry into EPA until April 14, 2021, and I remain recused from any specific party matters in which NRDC is a party if I participated personally and substantially previously in that same matter.

<sup>3</sup> *See* Exec. Order 13989, Section 2(k) and Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

I have been advised by OGC/Ethics that, for the purposes of my pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>4</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with a former client, which is a state university. Therefore, I may not participate in a particular matter involving specific parties in which **University of Vermont** is a party or represents a party, unless I am authorized to participate by OGC/Ethics pursuant to 5 C.F.R. § 2635.502(d). My recusal lasts for one year from the day I last provided services, which is **January 31, 2022**.

Pursuant to the federal ethics rules, I understand that I have a covered relationship with my spouse and his employer, Northwell Health. *See* 5 C.F.R. § 2635.502(b)(1)(ii)-(iii). I will recuse from specific party matters where my spouse or Northwell Health is a party or represents a party, unless I am otherwise authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d).

### *FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

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<sup>4</sup> *See* Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).



## ATTORNEY BAR OBLIGATIONS

In addition to the pledge restrictions involving my former employers and clients, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I understand that I am restricted from switching sides in litigation in which I participated in or provided counsel or that is the same as or substantially related to the same specific party matter in which I previously participated personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics. Set forth below are the cases pending at EPA in which I participated and from which I am recused for the entirety of my tenure at EPA:

CASE DESCRIPTION / SUBJECT MATTER	CASE CITATION
Litigation challenging EPA's enforcement of Title VI.	<i>Californians for Renewable Energy v. EPA</i> , case no. 4:15-cv-03292-SBA
Freedom of Information Request regarding ECRCO's docket.	EPA-2021-000375
Opposition to a Plantwide Applicability Limit permit decision.	In re: Limetree Bay Terminals, L.L.C. and Limetree Bay Refining, L.L.C., C.A.A. Appeals No.20-02M
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7, related to the New Mexico Environmental Department's issuance of a treatment, storage, and disposal permit.	EPA File No. 09R-02-R6
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to the Texas Commission on Environmental Quality's failure to provide effective public notice and access to TCEQ's programs.	TCEQ 02NO-20-R6
Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to the City of Flint's administration of the Safe Drinking Water act and failure to implement procedures for addressing compliance with EPA's non-discrimination regulation.	City of Flint 19RD-16-R5

Complaint alleging discrimination in violation of Title VI and 40 C.F.R. Part 7 related to Genesee County's administration of the Safe Drinking Water act and failure to implement procedures for addressing compliance with EPA's non-discrimination regulation.	Genesee County 18RD-16-R5
FOIA appeal of a request for records related to an EPA investigation of North Carolina's Department of Environmental Quality handling of CAFOs.	FOIA Appeal No. EPA-HQ-2020-001148

#### *DIRECTIVE AND CONCLUSION*

To avoid my participating in any of the matters from which I am recused, please refer those matters to the attention of **Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices**, without my knowledge or involvement. In the event that my circumstances change, e.g., my financial interests or my covered relationships, then I will consult with OGC/Ethics and update my recusal statement accordingly.

cc: Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection Programs  
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices  
Elise Packard, Deputy General Counsel for Operations  
OGC Associates and Directors  
Regional Counsels  
Daniel Conrad, Acting Associate Deputy General Counsel

Attachments



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Limited Waiver from Section 1, Paragraph 2 of Executive Order 13989

FROM: James Payne **JAMES PAYNE**  
Deputy General Counsel for Environmental Media and Regional Law Offices,  
and Designated Agency Ethics Official

TO: Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

Digitally signed by JAMES  
PAYNE  
Date: 2021.04.14  
13:21:48 -04'00'

Pursuant to the authority delegated under Section 3 of Executive Order 13989 (January 20, 2021), and after consultation with the Counsel to the President, I hereby grant you a limited waiver from the requirements of Section 1, paragraph 2 of the Executive Order. I certify that this limited waiver is necessary and in the public interest to permit you to participate in certain particular matters in which your former client, the National Resources Defense Council (NRDC), is a party or represents a party, provided that you did not previously participate personally and substantially in the matter with NRDC or any other party.

**BACKGROUND**

On January 20, 2021, President Biden signed Executive Order 13989, "Ethics Commitments by Executive Branch Personnel," which includes an Ethics Pledge. The Ethics Pledge imposes ethics requirements beyond federal ethics laws and regulations and attorney bar obligations. All individuals appointed to political positions on or after January 20, 2021 are required to sign the Ethics Pledge, which sets forth the "former client"<sup>1</sup> restriction at Section 1, paragraph 2:

*I will not for a period of 2 years from the date of my appointment participate in any particular matter involving specific parties that is directly and substantially related to my former employer or former clients, including regulations and contracts.*

You entered federal service at EPA effective January 31, 2021 and received your initial

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<sup>1</sup> A "former client" is defined as "any person for whom the appointee served personally as agent, attorney, or consultant within the 2 years prior to the date of his or her appointment, but excluding instances where the service provided was limited to speeches or similar appearances. It does not include clients of the appointee's former employer to whom the appointee did not personally provide services." Executive Order 13989, Section 2(1).

ethics training on February 4, 2021, the same day you signed the Ethics Pledge. You have properly recused yourself from participating in any particular matter in which your former employers or any of your former clients is a party or represents a party. The EPA has identified, however, an interest in having you work on particular matters involving one of your former clients – namely, NRDC -- for which you will require a pledge waiver as set forth in Section 3 of Executive Order 13989. Such waivers from the restrictions contained in Section 1, paragraph 2 may be granted upon certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. With the approval of the White House, the Acting Director of the Office of Management and Budget (OMB) has delegated to each executive branch Designated Agency Ethics Official the authority to exercise Section 3 waiver authority after consultation with the Counsel to the President.<sup>2</sup>

## ANALYSIS

Your career has been devoted to civil rights and environmental justice. Prior to joining the Biden Administration, you directed an Environmental Justice (EJ) Clinic at Vermont Law School that trains students in community lawyering and civil rights enforcement in the environmental justice context, and also served as Lecturer at both the Yale University School of Public Health and the Yale School of the Environment, where you supervised interdisciplinary teams of law, environmental, and public health students working on climate justice issues.

Your experience also includes ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. You began your legal career as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc. (LDF), where you represented clients attempting to break barriers of access to health care and quality education. You recently served as co-chair of the Equity and Environmental Justice Working Group of Connecticut's Governor's Council on Climate Change, and as a board member of both WE ACT for Environmental Justice and the Center for Public Representation. You have lectured widely and taught graduate, law, and undergraduate level courses. You also hold a B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University.

## PREVIOUS INVOLVEMENT IN FOIA CASES WITH NRDC

During the two-year period prior to your federal appointment, on behalf of the EJ Clinic you directed (first at Yale University and then at Vermont Law School), you and co-counsel Southern Environmental Law Center submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA). These FOIA requests were made on behalf of three client groups that included NRDC. This limited waiver applies only to NRDC.

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<sup>2</sup> See Office of Government Ethics Legal Advisory, LA-21-04 (Feb. 18, 2021).

The requests asked for information related to EPA's Title VI of the Civil Rights Act of 1964 (Title VI) docket, including complaints, acknowledgments, jurisdictional decisions, referrals and any dispositive decisions. Upon release of EPA's responsive records, the student team under your supervision reviewed the documents and discussed legal options in consultation with co-counsel and at the direction of the clients. Approximately four FOIA requests were submitted on behalf of these client groups, the first of which was in 2017 while you were at Yale University. You received no compensation specifically for this FOIA-related work that was distinct from your salary provided by your employers for running and supervising a clinic and serving as faculty. Although there were follow-up conversations with employees in EPA's External Civil Rights and Compliance Office (ECRCO) within the Office of General Counsel (OGC), they were limited to the FOIA response. There have been no legal challenges, appeals or litigation related to these FOIA requests.

#### YOUR OFFICIAL DUTIES ON BEHALF OF EPA

OGC serves as the chief legal advisor to the EPA Administrator and implements the nation's environmental laws. OGC also provides legal counsel to EPA policymakers and represents the Agency in court challenges to agency actions. In your position as Deputy General Counsel for Environmental Initiatives, you have responsibilities within OGC for the External Civil Rights Compliance Office, the Civil Rights and Finance Law Office, and the Pesticides and Toxic Substances Law Office (PTSLO). PTSLO is responsible for legal issues and related litigation for the Office of Chemical Safety and Pollution Prevention (OCSPP) in connection with OCSPP's regulatory efforts addressing pesticides and toxic chemicals governed respectively by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA). Similarly, PTSLO also provides legal support for OCSPP related to the Pollution Prevention Act (PPA) and the Toxics Release Inventory (TRI), the program under the Emergency Planning and Community Right-To-Know Act (EPCRA) that informs citizens about toxic releases in their communities. NRDC is frequently involved in these regulatory areas and is often named as a party to the litigation that PTSLO addresses.

In the position of Deputy General Counsel for Environmental Initiatives, your participation in the review and direction of substantive environmental legal matters under FIFRA, TSCA, and TRI is critical to PTSLO's effectiveness in these areas. Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in PTSLO. Consequently, there is an overlap of recusals that is impinging the ability of OGC to interact with our political leadership in certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other OGC political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior involvement as an employee in a State government. Your restriction is due solely to prior service in discrete and limited situations that are unrelated to FIFRA, TSCA and TRI.

For the two years prior to your EPA appointment, the services you personally provided to NRDC were limited to those Title VI-related FOIA requests. You did not provide advice or counsel to NRDC or otherwise enter into an attorney-client relationship with them and received

no compensation from them. The nature of your previous affiliation with NRDC does not relate in any way to their involvement in non-Title VI matters, such as OCSPP litigation or regulatory actions, arising at EPA. During the time period relevant to Section 1, paragraph 2 of the Ethics Pledge, you had no involvement on behalf of NRDC with the types of litigation PTSLO handles.

## CONCLUSION

In your position as the Deputy General Counsel for Environmental Initiatives, you must be able to advise senior leadership, including the Administrator, and provide legal counsel and vital input into the Agency's programs and litigations that address pesticides and toxic chemicals. Your prior involvements with NRDC was limited in scope and focused only on a handful of FOIA requests.

For the reasons set forth above, I grant you a limited waiver of the provisions of Section 1, paragraph 2 of Executive Order 13989 to enable you to effectively carry out your duties as Deputy General Counsel of Environmental Initiatives; to ably advise senior leadership, including the Acting General Counsel, and the Administrator; and to advance the interests of the Agency. The services you provided to NRDC, during the two years prior to your federal appointment were limited to discrete Title VI FOIA requests. I have determined that it is in the public interest for you to participate in certain specific party matters involving this former client due to your critical role and responsibilities associated with PTSLO. I find that the nature of your previous Title VI work should not restrict your ability to provide your legal counsel, vital input, and toxics expertise on litigation related to the Agency's pesticides and toxic chemicals program.

This limited waiver encompasses any such specific party matters arising at EPA where NRDC is a party or represents a party, and you did not previously participate personally and substantially while serving as an attorney for them or any other party. You are allowed to participate in those specific party matters, including meetings or communications relating to your official duties, where NRDC is present. However, you will remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. This limited waiver does not otherwise affect your obligations to comply with all other applicable federal ethics laws and regulations and provisions of Executive Order 13989, as well as your own attorney bar obligations.

cc: Dana Remus, Counsel to the President



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

**SUBJECT:** Impartiality Determination to Participate in Certain Specific Party Matters  
Involving the Natural Resources Defense Council

**FROM:** Justina Fugh Digitally signed by Justina Fugh  
Date: 2021.06.24  
22:33:48 -04'00'  
Alternate Designated Agency Ethics Official and  
Director, Ethics Office

**TO:** Marianne Engelman-Lado  
Deputy General Counsel for Environmental Initiatives

Prior to entering federal service on January 31, 2021, you directed two environmental justice clinics --first at Yale University and then at Vermont Law School – both of which provided legal services to clients and trained law students in community lawyering and civil rights enforcement. As part of the Vermont Law School environmental justice clinic, you and co-counsel Southern Environmental Law Center (SELC) submitted requests for certain EPA records pursuant to the Freedom of Information Act (FOIA) on behalf of several clients, including the Natural Resources Defense Council (NRDC).

Because NRDC was a “former client” of yours for federal ethics purposes and under Executive Order 13989, you could not participate in any specific party matter involving this entity unless you first sought and obtained ethics approval. The Designated Agency Ethics Official granted you a waiver from the Executive Order on April 14, 2021, and this memorandum formally confirms my impartiality determination granted orally on that same date.

**NEED FOR A PLEDGE WAIVER**

Pursuant to Executive Order 13989, you signed the Ethics Pledge and are prohibited from participating in specific party matters in which your former employer or former client (as defined in Section 2, paragraphs (k) and (l)) is a party or represents a party. Mindful of the fact that you had previously provided limited legal services to NRDC solely in the context of FOIA, and given the Agency’s interest in having your participation in environmental matters with NRDC that are unrelated to FOIA, the EPA sought a waiver of the provisions of Section 1, paragraph 2 of the Executive Order on your behalf. This limited waiver, which was granted on April 14, 2021, authorized you to participate personally and substantially in specific party matters arising at EPA in which your former client, NRDC, is a party, provided that you did not previously participate personally and substantially in that same matter for NRDC or any other party. *See attachment.*



## NEED FOR IMPARTIALITY DETERMINATION

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, Subpart E, “Impartiality in Performing Official Duty.” For one year from the date you last provided services to NRDC, you have a “covered relationship” with them pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). Absent an impartiality determination from me, you still cannot participate in any specific party matter in which NRDC is a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a). Although I granted this determination informally previously, I am confirming it in writing now.

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that EPA takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as Deputy General Counsel for Environmental Initiatives in specific party matters in which NRDC is a party, provided that you did not participate personally and substantially in the matter previously with NRDC or any other party. In making this determination to enable you to effectively carry out your duties as a Deputy General Counsel and to advance the interests of the Agency, I have taken the following factors into consideration:

Nature of the relationship involved – Your career has been devoted to civil rights and environmental justice. After graduating with your B.A. in government from Cornell University, a J.D. from the University of California at Berkeley, and an M.A. in Politics from Princeton University, you served as a staff attorney at the NAACP Legal Defense and Educational Fund, Inc., where you represented clients attempting to break barriers of access to health care and quality education. You also served for ten years as General Counsel at New York Lawyers for the Public Interest (NYLPI), a non-profit civil rights law firm, where you directed a legal and advocacy program addressing racial and ethnic disparities in access to health care, environmental justice, and disability rights. In addition to lecturing and teaching about environmental justice, you also directed environmental justice clinics at Vermont Law School and Yale University.

Throughout your career, you have represented individual clients and nonprofits alike on a broad array of environmental law and environmental justice issues. Although NRDC frequently interacts with the Agency on regulatory matters and in litigation, I note that your own previous affiliation with NRDC was limited in scope. As set forth in the Biden pledge waiver issued on April 14, 2021, your previous service to NRDC was limited to FOIA requests on Title VI inquiries only, not related to any actual or underlying Title VI matters. In fact, you did not otherwise serve as the attorney of record for NRDC. Therefore, your prior relationship with NRDC does not weigh against you for the purposes of this factor.

Effect of the matter upon your financial interest – NRDC did not compensate you directly for your services; instead, any financial remuneration was paid to your former employer, Vermont Law School. You do not have a financial conflict of interest with the Vermont Law School.<sup>1</sup>

Nature and importance of the employee's role – In addition to serving as the chief legal advisor to EPA and implementing the nation's environmental laws, the Office of General Counsel also provides legal counsel to EPA policymakers and represents the Agency in defense of agency actions. In the position of a Deputy General Counsel, you must be able to advise senior leadership and provide legal counsel and vital input into the Agency's programs and litigations, including those that address pesticides and toxic chemicals among other areas. Your invaluable knowledge and experience are of great importance in advocating the interests of the Agency and in advising the Acting General Counsel and Administrator.

Sensitivity of the matter – We anticipate that specific party matters in which NRDC is a party and that did not involve you personally and substantially may arise during your EPA tenure that will merit your attention and participation because they raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Although EPA currently has two other political appointees in OGC, both have their own bar and pledge obligations to observe with respect to matters arising in the Office of General Counsel. Consequently, there is an overlap of recusals that is impinging the ability of the Office of General Counsel to interact with its political leadership on certain nationally significant issues related to public health and the environment that are important priorities of the Administration. With respect to the other political appointees, one is recused because NRDC is her "former employer" for purposes of Executive Order 13989, while the other appointee is recused given prior service as an employee in a State government. Your participation as part of your official duties as a Deputy General Counsel is of importance to the continued functioning and continuity of the Office of General Counsel and, therefore, is in the Agency's interests.

Under this limited authorization, you may participate personally and substantially in specific party matters that involve NRDC, so long as they are not the very same specific party matters on which you worked personally and substantially for NRDC or any other party. You will be allowed to participate in these specific party matters, including meetings or communications related to your official duties, where NRDC is present. However, you will

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<sup>1</sup> See note to 5 C.F.R. § 2640.201(c).

remain recused from those specific party matters, including Title VI matters and FOIA requests, in which your former client is a party or if you participated personally and substantially previously. You will otherwise fully comply with the remainder of the requirements imposed by the Executive Order 13989 and with all applicable federal ethics laws and regulations, as well as your own attorney bar obligations.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov) or (202) 564-1786.

Attachment

cc: Melissa Hoffer, Acting General Counsel  
Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection  
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices  
Elise Packard, Deputy General Counsel for Operations Programs  
OGC Associates and Directors  
Regional Counsels  
Daniel Conrad, Acting Associate Deputy General Counsel



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Melissa Hoffer **Melissa A. Hoffer**  
Acting General Counsel

Digitally signed by  
Melissa A. Hoffer  
Date: 2021.08.17  
19:01:06 -04'00'

TO: Michael S. Regan  
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989 AND THE IMPARTIALITY PROVISIONS*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, political appointees are subject to additional ethics obligations with respect to their former employers. Because my former employer is the **Commonwealth of Massachusetts**, however, I am advised by OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employers do not apply to me. The definition of "former employer" in the Executive Order excludes state governments.<sup>1</sup> Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers.

I understand that I nonetheless have a "covered relationship" with my former employer for the purposes of the federal impartiality standards. Unless I first sought and obtained approval from an ethics official, I would not be permitted to participate in any specific party matter in which my former employer was a party or represented a party. On January 19, 2021, EPA's Alternate Designated Agency Ethics Official issued a limited impartiality determination to permit me, upon joining EPA, to participate in discussions and meetings related to policy

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<sup>1</sup> See Executive Order 13989 (1/20/2021) Section 2, Paragraph k.

decisions about litigation, given the change in administration. Provided that I did not work on the underlying merits of any of the cases, I was authorized to make policy decisions regarding pending litigation, including specific party matters in which the Commonwealth of Massachusetts was a party or intervenor, even if I had previously participated personally and substantially. *See* attachment 1. On February 2, 2021, EPA's Alternate Designated Ethics Official issued an impartiality determination authorizing me to participate in new or future specific party matters that involve the Commonwealth of Massachusetts, but not any of the very same specific party matters on which I worked personally and substantially. *See* attachment 2.

#### *ATTORNEY BAR OBLIGATIONS*

Pursuant to my obligations under applicable bar rules, I recognize that I am obliged to protect the confidences of my former employers/clients. I also understand that I cannot participate in any matter that is the same as the specific party matter that I participated in personally and substantially previously, unless my bar provides for and I first obtain informed consent and notify OGC/Ethics. I have received such consent to participate in a matter in connection with the Merrimack Generation Station in New Hampshire that I worked on previously. *See* attachment 3. The list of cases from which I am personally recused and will therefore not participate is included as attachment 4.

#### *FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

#### *DIRECTIVE AND CONCLUSION*

To avoid my participating in any of the matters from which I am recused, please refer those matters to the attention of **Jim Payne, Deputy General Counsel for Environmental**

**Media and Regional Law Offices**, without my knowledge or involvement. In the event that my circumstances change, e.g., my financial interests or my covered relationships, then I will consult with OGC/Ethics and update my recusal statement accordingly.

cc: Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection Programs  
Marianne Engelman-Lado, Deputy General Counsel for Environmental Initiatives  
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices  
Elise Packard, Deputy General Counsel for Operations  
OGC Associates and Directors  
Regional Counsels  
Daniel Conrad, Acting Associate Deputy General Counsel

Attachments



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

Ms. Melissa A. Hoffer  
[REDACTED]

By email to: [REDACTED]

Dear Ms. Hoffer:

In anticipation of your joining the United States Environmental Protection Agency (EPA) as the Principal Deputy General Counsel on or about January 20, 2021, you have asked if you would be permitted to participate in making policy decisions regarding specific party matters in which the Commonwealth of Massachusetts is a party or intervenor. Based on your request and the information available to us, the EPA generated the enclosed list of cases.

Within the last year, you have served as the Chief of the Energy and Environment Bureau of the Office of the Massachusetts Attorney General. We understand that you participated personally and substantially in a number of these cases or supervised others who participated personally and substantially in these particular matters that involve Massachusetts as a specific party.

Upon your swearing in as a federal employee, you will have a "covered relationship" with the Commonwealth of Massachusetts pursuant to 5 C.F.R. § 2635.502(b)(iv) and, for one year, must be mindful to avoid an appearance of a loss of impartiality in the performance of your official EPA duties. You do not have any significant financial interest in the Commonwealth of Massachusetts, so the Office of General Counsel does not determine that you had any conflicting financial interest. What remains is an impartiality concern.

Federal ethics regulations permit federal officials to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). These factors are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and



(6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

Since we have already determined that you have no substantial conflicting financial interest arising from your employment with Massachusetts, we turned to the six impartiality factors listed in 5 C.F.R. § 2635.502(d), taking each one into careful consideration.

We noted that your prior employment was with a State rather than a private entity. Generally, States share responsibility with EPA in protecting human health and the environment. In fact, with respect to many of our statutes, EPA has directly delegated regulatory and enforcement authority to states. That said, we also appreciate that, in some situations, States are directly regulated by this Agency.

We are mindful of the fact that the position description for the Principal Deputy General Counsel includes "First Assistant" duties for the General Counsel under the Vacancies Reform Act of 1998, 5 U.S.C. § 3345. We therefore considered the interests of the United States Government in a senior political appointee's ability to make policy decisions as to whether or not to continue to pursue current litigation, particularly at the onset of a new administration in the absence of a confirmed General Counsel or Administrator. Although we recognize that you face bar restrictions limiting your ability to participate in these cases substantively, we determined that your participation is not related to the underlying merits of any case but rather you would be making policy decisions only.

After careful consideration of the relevant factors, we conclude that the interest of the federal government outweighs any concerns about a loss of impartiality in your ability to participate in the enclosed list of particular matters that may affect or involve the Commonwealth of Massachusetts as a party and in which you may have participated personally and substantially. After joining the EPA as Principal Deputy General Counsel, you will be permitted to participate in discussions and meetings related to the policy decisions related to these cases. We remind you, however, not to participate in the merits of the cases nor to reveal any client confidences.

Please feel free to contact me or Jim Payne, Designated Agency Ethics Official, if you have any further questions. I can be reached at fugh.justina@epa.gov or (202) 564-1786; Jim can be reached at payne.jim@epa.gov or (202) 564-0212.

Sincerely yours,

Justina Fugh

Digitally signed by Justina  
Fugh  
Date: 2021.01.19  
18:45 38 -05'00'

Justina Fugh

Director, Ethics Office and

Alternate Designated Agency Ethics Official

enclosure

**LIST OF CASES IN WHICH MASSACHUSETTS IS A PARTY OR INTERVENOR**  
**PENDING IN EPA'S OFFICE OF GENERAL COUNSEL**

**Commonwealth of Massachusetts**

Defendant Intervenor:

- *Wisconsin v. EPA*, D.C. Cir. 16-1406 - petition for review of EPA's Final Rule titled "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS" 81 Fed. Reg. 74,504 (October 26, 2016)
- *Competitive Enterprise Institute v. EPA*, D.C. Cir. 20-1145 - petition to review "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks" Fed. Reg. 24174-25278 (April 30, 2020)
- *Murray Energy v. EPA*, 16-1127 D.C. Cir. - petition for review of EPA's final action entitled "Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units at 81 Fed. Reg. 24,420 (April 25, 2016)
- D.C. Cir. 16-1430 (defend EPA medium and heavy-duty truck GHG standards)

Intervenor:

- *League of United Latin American Citizens (LULAC), et al. v. EPA*, 9<sup>th</sup> Cir. 17-71636 - Challenge to March 29, 2017 order denying PANNA/NRDC FFDCA petition
- *North Dakota v. EPA*, D.C. Cir. No.15-1381 - EGU GHG 111(b)

Petitioner

- D.C. Cir. 19-1230 (SAFE CA waiver )
- *New York et. al. v. Wheeler et. al.*, S.D.N.Y. 19-11673 - Challenge to the rule repealing the 2015 definition of "waters of the United States" under the CWA and reinstating the prior regulatory definition.
- *New York et. al. v. EPA*, D.C. Cir. 17-1273 - petition for review of EPA's final action titled "Response to the December 9, 2013, Clean Air Act Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont," 82 Fed. Reg. 51,238 (November 3, 2017)
- *New York et. al. v. EPA*, D.D.C. 1:18-cv-00773 - for failure to establish guidelines for standards of performance for methane emissions from existing oil and gas operations
- *New York et. al. v. EPA*, D.C. Cir. 18-xxxx - petition for review of EPA's notice entitled "Protection of Stratospheric Ozone: Notification of Guidance and a Stakeholder Meeting Concerning the Significant New Alternatives Policy (SNAP) Program," 83 Fed. Reg. 18,431 (April 27, 2018)
- *New York et. al. v. Wheeler et. al.*, 9<sup>th</sup> Cir. 19-71982 - Petition for review of "Chlorpyrifos; Final Order Denying Objections to March 2017 Petition Denial Order"
- *New York et. al. v. EPA*, D.C. Cir. 19-1165 - petition for review of EPA's final agency action entitled "Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations," published at 84 Fed. Reg. 32,520 (July 8, 2019)
- *New York et. al. v. EPA*, D.C. Cir 20-1437 - petition for review of EPA's final action titled "Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Final Actions on Petitions for Reconsideration" at 85 Fed. Reg. 55,286 (Sept. 4, 2020)
- *New York et. al. v. EPA*, S.D.N.Y. 1:21-cv-00252 - for failure to approve or disapprove Good Neighbor state implementation plans for the 2015 ozone NAAQS for 6 states (IN, KY, MI, OH, TX, WV)

- *New York et. al. v. EPA*, S.D.N.Y. 1:16-cv-07827 - Failure to Act on their Petitions Under Clean Air Act Section 176A
- *California et. al. v. EPA*, D.C. Cir. Case No. 21-XXXX – petition for review of final agency action entitled “Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures,” published at 86 Fed. Reg. 2,136 (Jan. 11, 2021).
- *California et. al. v. Wheeler et. al.*, N.D. Cal. 3:20cv03005 – NWPR
- *California et. al. v. EPA*, N.D. Cal. 3:17-cv-06936; 4:17-cv-06936 - for Failure to Issue Designations for 2015 Ozone National Ambient Air Quality Standards
- *California et. al. v. EPA*, D.C. Cir. 20-1357 - Petition for review challenging the Oil & Gas Policy Rule: “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review” 85 Fed. Reg. 57,018 (Sept. 14, 2020)
- *California et. al. v. EPA*, D.C. Cir. 21-1014 - petition for review of EPA's final action entitled “Review of the National Ambient Air Quality Standards for Particulate Matter,” published at 85 Fed. Reg. 82,684 (Dec. 18, 2020)
- *Commonwealth of Massachusetts et. al v. EPA*, 3:03-CV-984 D. Conn. - Failure to list CO2 as a criteria pollutant
- *Commonwealth of Massachusetts et. al v. EPA*, D.C. Cir. 20-1221 - Petition for Review of EPA’s National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review at 85 Fed. Reg. 31,286 (May 22, 2020) (aka MATS)
- *New Jersey et. al. v. EPA*, S.D.N.Y. 1:20-cv-01425 - for Failure to Perform Nondiscretionary Duty to Promulgate Federal Implementation Plans for the Good Neighbor Provision Requirements for the 2008 Ozone NAAQS
- *American Lung Association v EPA*, D.C. Cir No. 19-1440 – ACE litigation
- D.C. Cir. No. 20-1145
- N.D. Cal. No. 19-cv-03807 (TSCA asbestos reporting)
- Ninth Cir. No. 20-73276 (methylene chloride risk evaluation)
- N.D. Cal. No. 20-cv-04869 (limiting state authority re Section 401 water quality certifications)
- MA-led amicus in support of challenge to WOTUS, D-Mass 12/20 (do not have docket no.)

### **Massachusetts Department of Environmental Protection**

#### **Defendant:**

- *Alderson v. EPA et. al.*, 1:10-cv-10793 (appears dismissed but displayed as active?)
- *PSD Appeal No. 14-02*, E.A.B.- PSD permit issued by Massachusetts DEP
- *Brooks v. EPA et. al.*, 1<sup>st</sup> Cir. 14-2252, petition for review of Notice of Decision To Issue a Clean Air Act PSD Permit for Salem Harbor Redevelopment Project
- *Rauseo v. Army Corps of Engineers et. al.*, D. Mass. 1:17-cv-12026-NMG - Failure to exercise jurisdiction over filled wetlands

#### **ADDITIONAL CASES:**

- *Greenroots, Inc. and Conservation Law Foundation v. EPA*, (District of Massachusetts, Case No. 1:21-cv-10065) (Mass is not a party but the case involves some complaints filed with ECRCO against Mass agencies.)
- Intervenor, Newmont USA Limited v. EPA, No. 04-1069 (Challenge to 2002 NSR reform rule treatment of fugitive emissions)
- Petitioner, State of New York v. EPA, No. 20-1022 (Challenge to 2019 RMP Rule) (consolidated under Air Alliance Houston v. EPA, No. 19-1260)

Added 1/21/21: GAS PROCESSORS ASSOCIATION V. EPA, 11-1023, D.C. Cir.



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

February 2, 2021

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

**SUBJECT:** Impartiality Determination to Participate in Certain Matters Involving the Commonwealth of Massachusetts

**FROM:** Justina Fugh, Alternate Designated Agency Ethics Official and Director, Ethics Office

Digitally signed by Justina Fugh  
Date: 2021.02.02  
00:03:39 -05'00'

**TO:** Melissa Hoffer  
Acting General Counsel

As the Acting General Counsel of the United States Environmental Protection Agency (EPA), you seek permission to participate in specific party matters involving the Commonwealth of Massachusetts. Within the last year, prior to being selected for this position, you served as the Chief of the Energy and Environment Bureau with the Massachusetts Attorney General's Office.

On January 20, 2021, you were appointed to the position of EPA's Principal Deputy General Counsel. The Acting Administrator approved that appointment on January 28, 2021. Based upon your appointment as the first assistant to the EPA General Counsel, you automatically became the Acting EPA General Counsel as a matter of law under 5 U.S.C. § 3345(a)(1). An incoming Principal Deputy General Counsel, appointed to that position after the General Counsel vacancy arises, may automatically serve in an acting capacity. *See* Designation of Acting Associate Attorney General, 25 Op. O.L.C. 177, 179 (2001).

Under President Biden's Ethics Pledge, political appointees are prohibited from participating in specific party matters in which their former employer or former client is a party. However, state government is excluded under the definition of "former employer."<sup>1</sup> Therefore the Ethics Pledge does not apply to your Massachusetts employment. Federal ethics rules, however, do not contain a similar exclusion for state government, so those rules do apply to your prior employment with the Commonwealth of Massachusetts.

What remains is an impartiality concern under the federal ethics rules set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." You have a "covered

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<sup>1</sup> *See* Exec. Order 13989, Section 2(k), which provides that "'former employer' does not include...State or local government."

relationship” with the Commonwealth of Massachusetts under 5 C.F.R. § 2635.502(b)(1)(iv). For one year from the date your employment with the Attorney General’s Office terminated, absent an impartiality determination from me, you cannot participate in any specific party matter in which the Commonwealth of Massachusetts is a party or represents a party if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee’s participation outweighs concern over the questioning of the “integrity of the agency’s programs and operations.” 5 C.F.R. § 2635.502(d). The factors that we take into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee’s role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee’s duties that would reduce or eliminate the likelihood that a reasonable person would question the employee’s impartiality.

As Acting General Counsel, you are the chief legal advisor to the Agency and part of the Agency’s political leadership. In your current role as Acting General Counsel, and in your role as Principal Deputy General Counsel if you revert back within a year, you are expected to communicate freely with states, and you will be asked to participate in discussions and meetings related to particular matters that affect the Commonwealth of Massachusetts. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate as part of your official EPA duties in particular matters that involve the Commonwealth of Massachusetts with the following limitation: you must recuse yourself from participation in specific party matters in which you participated personally and substantially while employed with the Attorney General’s Office.

In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – Since 2015, you have served as the Chief of the Energy and Environment Bureau with the Massachusetts Attorney General’s Office. In this role, you oversaw the Bureau’s attorneys on matters including prosecuting civil and criminal enforcement of environmental laws, energy policy, ratepayer advocacy, defensive cases, and affirmative advocacy. Sensitivities regarding your impartiality will necessarily revolve around the issues in which you participated personally and substantially for the Attorney General’s Office. States share responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with state governmental entities on a continuing and frequent basis.

Effect of the matter upon your financial interest – We have determined that you do not have any significant financial interest in the Commonwealth of Massachusetts, so you do not have any conflicting financial interest.

Nature and importance of the employee's role – As the Acting General Counsel, you are the chief legal advisor to the Agency. Among other things, OGC lawyers provide legal counsel to EPA policymakers, shape national legislation affecting the environment, and provide legal support for the issuance of permits, the approval of environmental programs, and the initiation and litigation of enforcement actions. As Acting General Counsel, or as Principal Deputy General Counsel if you should revert back within a year, you are expected to communicate freely with states, including Massachusetts.

Sensitivity of the matter – We anticipate that there may be specific party matters in which you did not participate personally and substantially for the Massachusetts Attorney General's Office that will rise to your level of attention, merit your participation, and raise nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation as part of your official duties as Acting General Counsel, or as Principal Deputy General Counsel if you should revert back to those duties within the year, in such matters will be of importance to the Acting Administrator and the confirmed Administrator and, therefore, is in the Agency's interests. In these situations, it may not be appropriate to reassign the matter to another employee.

Under this limited authorization, you are authorized to participate in new or future specific party matters that involve the Commonwealth of Massachusetts, but not on the very same specific party matters on which you worked on personally and substantially while employed by the Massachusetts Attorney General's Office. If the Agency determines that it has a compelling reason for your participation as an EPA official on any of those same specific party matters that you participated in personally and substantially, then you may ask OGC/Ethics to reconsider the factors and information listed above on a case-by-case basis. Unless and until you receive written authorization, you must continue to recuse yourself from those matters in which you had previously participated while OGC/Ethics considers whether the Agency's interest in your participation outweighs any impartiality concern.

You are also cognizant of your attorney bar rules that prohibit you from participating in any matter that is the same or substantially related to the same specific party matter that you previously participated in personally and substantially, unless your bar provides for and you first obtain informed consent and notify OGC/Ethics. On January 19, 2021, I issued you an impartiality determination allowing you to participate in discussions and meetings related to the policy decisions for those cases that may affect or involve the Commonwealth of Massachusetts and in which you may have participated personally and substantially. However, you were reminded not to participate in the merits of those cases nor to reveal any client confidences.

While I have issued you this determination to interact with the Commonwealth of Massachusetts with the limitation described above, you may wish to make adjustments to your duties to not participate in a particular matter that involves Massachusetts. Nothing in this impartiality determination precludes you from making additional adjustments to your duties, such as voluntarily recusing from other matters, although you are advised to confer with OGC/Ethics should such a circumstance arise.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at [fugh.justina@epa.gov](mailto:fugh.justina@epa.gov) or (202) 564-1786.

cc: Dimple Chaudhary, Deputy General Counsel for Nationwide Resource Protection  
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices  
Elise Packard, Deputy General Counsel for Operations Programs  
Daniel H. Conrad, Acting Associate Deputy General Counsel



**LIST OF CASES IN WHICH MASSACHUSETTS IS A PARTY OR INTERVENOR**  
**PENDING IN EPA'S OFFICE OF GENERAL COUNSEL**

**Commonwealth of Massachusetts**

Defendant Intervenor:

- *Wisconsin v. EPA*, D.C. Cir. 16-1406 - petition for review of EPA's Final Rule titled "Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS" 81 Fed. Reg. 74,504 (October 26, 2016)
- *Competitive Enterprise Institute v. National Highway Traffic Safety Administration, et al.*, D.C. Cir. 20-1145 (and consolidated cases) - petition to review "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks" Fed. Reg. 24174-25278 (April 30, 2020)
- *Murray Energy v. EPA*, 16-1127 D.C. Cir. - petition for review of EPA's final action entitled "Supplemental Finding that it is Appropriate and Necessary to Regulate Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units at 81 Fed. Reg. 24,420 (April 25, 2016)
- *Truck Trailer Manufacturer's Association, Inc. v. EPA*, D.C. Cir. 16-1430 (defend EPA medium and heavy-duty truck GHG standards)

Intervenor:

- *League of United Latin American Citizens (LULAC), et al. v. EPA*, 9<sup>th</sup> Cir. 17-71636 - Challenge to March 29, 2017 order denying PANNA/NRDC FFDCA petition
- *North Dakota v. EPA*, D.C. Cir. No. 15-1381 – petition for review EPA's final action to regulate EGU GHG emissions under CAA 111(b), entitled "Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources —Electric Utility Generating Units," at 80 Fed. Reg. 64509 (October 23, 2015)
- *Gas Processors Association v. EPA*, No. 11-1023 (D.C. Cir.) - "Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems," 75 Fed. Reg. 74,458 (November 30, 2010).

Petitioner

- *Union of Concerned Scientists, et al. v. National Highway Traffic Safety Administration*, D.C. Cir. 19-1230 (and consolidated cases) petition for review of "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program," 84 Fed. Reg. 51,310 (Sept. 27, 2019)
- *New York et. al. v. Wheeler et. al.*, S.D.N.Y. 19-11673 - Challenge to the rule repealing the 2015 definition of "waters of the United States" under the CWA and reinstating the prior regulatory definition.
- *New York et. al. v. EPA*, D.C. Cir. 17-1273 - petition for review of EPA's final action titled "Response to the December 9, 2013, Clean Air Act Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island, and Vermont," 82 Fed. Reg. 51,238 (November 3, 2017)
- *New York et. al. v. EPA*, D.D.C. 1:18-cv-00773 - for failure to establish guidelines for standards of performance for methane emissions from existing oil and gas operations
- *New York et. al. v. EPA*, D.C. Cir. 18-1174 - petition for review of EPA's notice entitled "Protection of Stratospheric Ozone: Notification of Guidance and a Stakeholder Meeting Concerning the Significant New Alternatives Policy (SNAP) Program," 83 Fed. Reg. 18,431 (April 27, 2018) (consolidated as *NRDC et. al., v. Wheeler*, Case No. D.C. Cir. 18-1172).
- *New York et. al. v. Wheeler et. al.*, 9<sup>th</sup> Cir. 19-71982 - Petition for review of "Chlorpyrifos; Final Order Denying Objections to March 2017 Petition Denial Order" (consolidated as *LULAC v. EPA*, 9<sup>th</sup> Cir. No. 19-71979).
- *New York et. al. v. EPA*, D.C. Cir. 19-1165 - petition for review of EPA's final agency action entitled "Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing

## Attachment 4

Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations,” published at 84 Fed. Reg. 32,520 (July 8, 2019)

- *New York et. al. v. EPA*, D.C. Cir 20-1437 - petition for review of EPA’s final action titled “Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Final Actions on Petitions for Reconsideration” at 85 Fed. Reg. 55,286 (Sept. 4, 2020) (consolidated as *Air Alliance Houston v. EPA*, No. 19-1260)
  - *State of New York v. EPA*, No. 20-1022 (Challenge to 2019 RMP Rule) (consolidated as *Air Alliance Houston v. EPA*, No. 19-1260)
- *New York et. al. v. EPA*, S.D.N.Y. 1:21-cv-00252 - for failure to approve or disapprove Good Neighbor state implementation plans for the 2015 ozone NAAQS for 6 states (IN, KY, MI, OH, TX, WV)
- *New York et. al. v. EPA*, S.D.N.Y. 1:16-cv-07827 - Failure to Act on their Petitions Under Clean Air Act Section 176A
- *California et. al. v. EPA*, D.C. Cir. Case No. 21-1018 (and consolidated cases) – petition for review of final agency action entitled “Control of Air Pollution from Airplanes and Airplane Engines: GHG Emission Standards and Test Procedures,” published at 86 Fed. Reg. 2,136 (Jan. 11, 2021).
- *California et. al. v. Wheeler et. al.*, N.D. Cal. 3:20cv03005 – challenging the Navigable Waters Protection Rule.
- *California et. al. v. EPA*, N.D. Cal. 3:17-cv-06936; 4:17-cv-06936 - for Failure to Issue Designations for 2015 Ozone National Ambient Air Quality Standards (consolidated as *In re Ozone Designation Litigation*, Case No. 4:17-cv-06936)
- *California et. al. v. EPA*, D.C. Cir. 20-1357 - Petition for review challenging the Oil & Gas Policy Rule: “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Review” 85 Fed. Reg. 57,018 (Sept. 14, 2020)
- *California et. al. v. EPA*, D.C. Cir. 21-1014 – (and consolidated cases) petition for review of EPA's final action entitled “Review of the National Ambient Air Quality Standards for Particulate Matter,” published at 85 Fed. Reg. 82,684 (Dec. 18, 2020)
- *Commonwealth of Massachusetts et. al v. EPA*, 3:03-CV-984 D. Conn. - Failure to list CO2 as a criteria pollutant
- *Commonwealth of Massachusetts et. al v. EPA*, D.C. Cir. 20-1221 - Petition for Review of EPA’s National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review at 85 Fed. Reg. 31,286 (May 22, 2020) (aka MATS) (consolidated as *American Academy of Pediatrics v. Regan*, D.C. Cir. 20-1221)
- *New Jersey et. al. v. EPA*, S.D.N.Y. 1:20-cv-01425 - for Failure to Perform Nondiscretionary Duty to Promulgate Federal Implementation Plans for the Good Neighbor Provision Requirements for the 2008 Ozone NAAQS
- *American Lung Association v EPA*, D.C. Cir No. 19-1140, consolidated challenges to the Clean Power Plan Repeal and the Affordable Clean Energy (ACE) Rule (“Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations,” published at 84 Fed. Reg. 32,520 (July 8, 2019))
  - *West Virginia v. EPA*, S. Ct., No. 20-1530 - Petition for writ of certiorari to review D.C. Circuit decision in *ALA v. EPA*.
- *State of California, et al., v. EPA, et al.*, N.D. Cal. No. 19-cv-03807 (consolidated with *Asbestos Disease Awareness Organization, et al. v. Andrew Wheeler et al.*, No. 19-cv-00871-EMC) - TSCA Section 21 petition seeking amendment to Chemical Data Reporting rule for further asbestos reporting.
- *State of New York et al., v. Wheeler*, Ninth Cir. No. 20-73276 (consolidated with *Neighbors for Environmental Justice et al. v. EPA*, Ninth Cir. No. 20-2729) - Petition to review methylene chloride risk evaluation.
- *State of California et al. v. Wheeler*, No. 3:20-cv-4869 N.D. Cal. - limiting state authority re Section 401 water quality certifications (as consolidated in *In re Clean Water Act Rulemaking*, No. 3:20-cv-04636-WHA (N.D. Cal.)).
- *Conservation Law Found. v. EPA*, No. 20-10820 (D. Mass.) (challenge to Navigable Waters Protection Rule; MA lead amicus brief in support of challenge).
- *New York v. EPA.*, DC Cir. 21-1028 -- petition for review of EPA’s final action titled *Review of the Ozone National Ambient Air Quality Standards*, 85 Fed. Reg. 87,256 (Dec. 31, 2020).

## Attachment 4

### ADDITIONAL CASES:

- *Greenroots, Inc. and Conservation Law Foundation v. EPA*, (District of Massachusetts, Case No. 1:21-cv-10065) (Mass is not a party but the case involves some complaints filed with ECRCO against Mass agencies.)
- *Center for Food Safety, et al. v. Wheeler* (9th Cir. No. 19-72109) -- challenge to the issuance under FIFRA of registration for certain uses of sulfoxaflor (a pesticide), and failure to consult under the Endangered Species Act (Massachusetts filed amicus brief in opposition to EPA)



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
WATER

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Radhika K. Fox  
Principal Deputy Assistant Administrator

**RADHIKA  
FOX**

Digitally signed by  
RADHIKA FOX  
Date: 2021.06.16  
06:07:39 -07'00'

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employers, **U.S. Water Alliance, Jobs to Move America, PolicyLink, and the Aspen Institute**, is a party or represents a party. I understand that my recusal will last for two years from the date that I joined federal service. This recusal will end after January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term "particular matters involving specific parties" is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term "open to all interested parties" means that the meeting should include a multiplicity of parties. If, for example, there is "a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client."<sup>1</sup> Should a question arise as to whether a specific forum qualifies as "open to all interested parties," then I will consult with OGC/Ethics.

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<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

## FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

### *Particular Matters Involving Specific Parties*

Because of the current level of financial ownership, I am disqualified from participating personally and substantially in any particular matter that affects any of following entities as a specific party:

RECUSAL LIST – SPECIFIC PARTY MATTERS			
3M	Caterpillar, Inc.	JP Morgan & Chase	Raytheon Technologies Corp.
Abbot Laboratories	Centene Corp.	Mastercard, Inc.	SalesForce
Abbvie, Inc.	Chevron Corp.	Medtronic PLC	Starbucks Corp.
Alphabet, Inc.	Citigroup, Inc.	Metlife, Inc.	Traveler's
Amazon	Coca-Cola Co.	Microsoft	UPS
Amgen, Inc.	Comcast Corp.	Morgan Stanley	U.S. Bancorp
Anthem, Inc.	Costco	Nike, Inc.	United Health Group
Apple, Inc.	Exxon Mobil Corp.	Novartis AG	Valero Energy
Bank of America	Facebook, Inc.	Nvidia Corp	Verizon Communications
Bank of Montreal	FedEx Corp.	OTIS Worldwide Corp.	Visa, Inc.
Berkshire Hathaway	Home Depot, Inc.	PepsiCo, Inc.	Walt Disney
BHP Group	Honeywell International, Inc.	Pfizer, Inc.	
Boeing Co.	Intel, Corp.	PNC Financial Services	
Carrier Global Corporation	Johnson & Johnson	Proctor & Gamble	

### *Particular Matters of General Applicability*

I am also disqualified from participating personally and substantially in any particular matter of general applicability that is focused on the interests of any individual discrete and identifiable class of “persons” (identified as “sectors” below). This prohibition extends to each class (or sector) individually. If a matter affects all sectors or if a particular matter affects a combination of sectors, including the ones listed below, then I understand that I do not have a financial conflict of interest.

RECUSAL LIST –SECTORS		
Aerospace & Defense	Apparel, Accessories, Footwear, & Luxury Goods	Banks
Beverages	Building Products	Consumer Finance
Diversified Financial Services	Electrical Equipment	Food & Staples Retailing
Healthcare Equipment & Services	Home Improvement Retail	Hotels, Resorts, & Cruise Lines
Household & Personal Products	Insurance	Internet & Direct Marketing Retail
Machinery	Media & Entertainment	Oil & Gas – Downstream, Midstream, Upstream
Pharmaceuticals, Biotechnology, & Life Sciences	Renewable Energy Sources (Solar, Wind, Geothermal, Hydro)	Software & Services
Specialty Chemicals	Technology Hardware & Equipment	Telecommunication Services
Transportation (Air Freight & Logistics; Marine, Road & Rail)	Utilities	

### *Bonds*

I am recused from participating in any particular matter that will have a direct and predictable financial effect upon the ability and willingness of the following bond issuers to honor their obligations or that will affect their bond ratings.

RECUSAL LIST – BONDS	
New Jersey Turnpike Authority	San Juan Unified School District, California
New Jersey Economic Development Authority	Public Works Board, California
State of New Jersey	William S. Hart School District, California
Union County, New Jersey	Chaffey Community College District, California
Carteret, New Jersey	Chabot Las Positas Community College District, California
Orange Township, New Jersey	City and County San Francisco, California
State of California	Long Beach, California

### *Certificate of Divestiture*

I intend to seek a certificate of divestiture and will update this recusal statement when my financial situation changes.

### *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal ethics rules, I understand that I have a covered relationship with the **Water Solutions Network**, as within the last year I served on their Advisory Council, though I was unpaid and did not have any fiduciary obligations. 5 C.F.R. § 2635.502(b)(v). Therefore, I am recused from working on any specific party matters where the Water Solutions Network is a party or represents a party, for one year from the date of my resignation. This recusal period will expire after **January 20, 2022**.

I also have a covered with my spouse and my spouse's employer, Direct Commerce, Inc. See 5 C.F.R. § 2635.502(b)(1)(ii) and (iii). I will recuse from specific party matters where my spouse or his employer is a party or represents a party, unless I am otherwise authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d).

### *DIRECTIVE AND CONCLUSION*

To avoid participating in all of the matters outlined above from which I am recused, please direct them to the attention of **Benita Best-Wong, Deputy Assistant Administrator**, without my knowledge or involvement. Should these recusals have a significant impact on my ability to perform my duties, I will seek additional guidance from OGC/Ethics and will consult with them to revise my recusal statement if my circumstances change, including changes in my financial interests, my personal or business relationships, or my EPA duties, and provide a copy to you and the Ethics Office.

cc: Benita Best-Wong, Deputy Assistant Administrator  
OW Office Directors  
Justina Fugh, Director, Ethics Office  
Louise Kitamura, OW/IO Assistant Deputy Ethics Official





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Recusal Statement      Chaudhary, Dimple  
FROM: Dimple Chaudhary      Digitally signed by Chaudhary, Dimple  
Deputy General Counsel for Nationwide Resource Protection Programs      Date: 2021.04.27 19:59:08 -04'00'

TO: Melissa Hoffer  
Acting General Counsel

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and the Biden Ethics Pledge that I signed, as well as my own attorney bar obligations.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, **National Resources Defense Council**, is a party or represents a party. Under the terms of the Ethics Pledge, this recusal lasts for two years from the date that I joined federal service, or until January 20, 2023.

I have been advised by OGC/Ethics that, for the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>1</sup> Such a meeting must also include a diversity of interests. Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

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<sup>1</sup> See Office of Government Ethics (OGE) Advisory DO-09-011 (3/26/09), which applies to Exec. Order 13989 pursuant to OGE Legal Advisories LA-21-03 (1/22/21) and LA-21-05 (2/23/21).

## ATTORNEY BAR OBLIGATIONS

In addition to the pledge restrictions involving my former client, NRDC, I understand that I am bound by my bar rules and am obliged to protect the confidences of my former clients. I understand that I am restricted from switching sides in litigation in which I participated in or provided counsel or that is the same as or substantially related to the same specific party matter in which I previously participated personally and substantially, unless my bar provides for and I first obtain informed consent and coordinate with OGC/Ethics. Set forth below are the cases pending at EPA in which I participated and from which I am recused for the entirety of my tenure at EPA:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	<i>Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA</i> , Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	<i>Labor Council for Latin America, NRDC, et al. v. EPA</i> , Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	<i>NRDC v. Wheeler</i> , Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	<i>Walters v. Flint, EPA, et al.</i> , Case No. 17-10164, E.D. Mich.

## FINANCIAL CONFLICTS OF INTEREST

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

## *OBLIGATIONS UNDER THE IMPARTIALITY PROVISIONS*

Pursuant to the federal ethics rules, I understand that I have a covered relationship with my spouse and my spouse's employer, Jenner & Block. *See* 5 C.F.R. § 2635.502(b)(1)(ii) and (iii). I will recuse from specific party matters where my spouse or his employer is a party or represents a party, unless I am otherwise authorized by OGC/Ethics to participate, pursuant to 5 C.F.R. § 2635.502(d).

## *SCREENING ARRANGEMENT*

In order to ensure that I do not participate in particular matters from which I am recused, I have asked the Deputy General Counsel for Environmental Media and Regional Law Offices, Jim Payne, to assist in screening EPA matters directed to my attention. All inquiries and comments involving my recusals should be directed to him without my knowledge or involvement. If Jim determines I am recused, then he will take action or refer it for action or assignment to another, without my knowledge or involvement.

## *UPDATE AS NECESSARY*

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my screening arrangement, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Marianne Engelman-Lado, Deputy General Counsel for Environmental Initiatives  
Jim Payne, Deputy General Counsel for Environmental Media and Regional Law Offices  
Elise Packard, Deputy General Counsel for Operations  
Daniel Conrad, Acting Associate Deputy General Counsel  
OGC Associate General Counsels  
Regional Counsels  
Justina Fugh, Director, Ethics Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 9  
75 HAWTHORNE STREET  
SAN FRANCISCO, CA 94105

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Martha Guzman Aceves Martha Guzman Aceves  
Regional Administrator Aceves

Digitally signed by Martha  
Guzman Aceves  
Date: 2022.02.16  
14:36:07 -08'00'

TO: Michael S. Regan  
Administrator

I have consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This recusal statement formally notifies you of my continuing obligation to recuse myself from participating personally and substantially in certain matters in which I have a financial interest, or a personal or business relationship. I also understand that I have obligations pursuant to Executive Order 13989 and President Biden's Ethics Pledge that I signed.

*FINANCIAL CONFLICTS OF INTEREST*

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

I have consulted with OGC/Ethics and been advised that I do not currently have any financial conflicts of interest. I will remain vigilant and notify OGC/Ethics immediately should my financial situation change.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of Executive Order 13989, I understand that I have ethics obligations with respect to my former employer, the **California Public Utilities Commission**, under the federal ethics regulations at 5 C.F.R. § 2635.502(b)(1)(iv). The Executive Order provides more restrictions than the federal ethics rules, but I am advised by

OGC/Ethics that the additional restrictions contained in the Executive Order regarding former employer do not apply to me. The definition of “former employer” excludes state government.<sup>1</sup> Therefore, OGC/Ethics has confirmed that I am not subject to the additional Executive Order restrictions regarding former employers for this entity.

### *OBLIGATIONS UNDER THE IMPARTIALITY REGULATIONS*

Pursuant to the federal impartiality standards, I understand that I have a “covered relationship” with my former employer, which is a state government commission, as well as with the state and local government boards that I previously served, such as the **Interagency Solar Consumer Protection Task Force**, and the **Lithium Valley Commission**. On December 21, 2021, the EPA’s Alternate Designated Agency Ethics Official issued an impartiality determination that authorizes me to participate as Regional Administrator in particular matters that involve California, but not on the very same specific party matters I worked on personally and substantially while employed with the California Public Utility Commission. See attached impartiality determination.

### *DIRECTIVE AND CONCLUSION*

To ensure that I do not participate matters from which I am recused, please direct them to the attention of **Deborah Jordan, Deputy Regional Administrator**, without my knowledge or involvement. Do not send or copy me on substantive emails, request that I attend meetings or participate in any discussions, make recommendations, or otherwise make decisions regarding a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to OGC/Ethics or regional ethics counsel.

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my circumstances, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

### *Attachment*

cc: Janet McCabe, Deputy Administrator  
Dan Utech, Chief of Staff  
Deborah Jordan, Deputy Regional Administrator  
Gretchen Busterud, Acting Regional Counsel  
Jim Payne, Designated Agency Ethics Official  
Steven Jawgiel, Regional Ethics Counsel  
Beatrice Wong, Regional Ethics Counsel  
Justina Fugh, Director, Ethics Office

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<sup>1</sup> See Exec. Order 13989, Section 2(k), which provides that “‘former employer’ does not include...State or local government.”



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BLVD  
LENEXA, KS 66219

**MEMORANDUM**

SUBJECT: Recusal Statement

FROM: Meghan A. McCollister MEGHAN  
Regional Administrator MCCOLLISTER

Digitally signed by  
MEGHAN MCCOLLISTER  
Date: 2022.02.14 16:09:29  
-06'00'

TO: Michael S. Regan  
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating in certain matters in which I have a financial interest or a former business relationship.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal conflict of interest law, 18 U.S.C. § 208(a), I will not participate personally and substantially<sup>1</sup> in any particular matter<sup>2</sup> that will have a direct and predictable effect on my financial interests or the financial interests of a person whose interests are imputed to me unless I first obtain a written conflict of interest waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). The interests of the following persons are imputed to me: my spouse or my minor child; a general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization

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<sup>1</sup> To participate “*personally*” means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate “*substantially*” means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(2).

<sup>2</sup> A “*particular matter*” includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(1).

with which I am negotiating or have an arrangement concerning prospective employment.

*Particular matters involving specific parties<sup>3</sup>:*

Given the value of my financial interests, I must disqualify from participating personally and substantially in any particular matter that affects the financial interests of **Apple, Cerner Corporation, and Berkshire Hathaway and its wholly-owned subsidiaries** as a specific party or a non-party competitor.

*Particular Matters of General Applicability<sup>4</sup>*

Based on the value of my current financial interests, I am disqualified from participating personally and substantially in any particular matter of general applicability affecting the financial interests of companies in the following industry sectors:

- Building Materials/construction
- Computer technology/media content & entertainment
- Energy/oil & gas, utilities, renewable, power transmission
- Healthcare/health information technology services & equipment
- Industrial equipment manufacturing
- Leisure equipment/motorcycles
- Packaged food/fast food
- Railroads
- Specialty chemicals/coatings
- Water treatment technology solutions and equipment

*Divestiture*

In order to avoid an actual or potential conflict of interest with the performance of my official duties, I will divest my individual and joint shares of **Berkshire Hathaway**. OGC/Ethics has determined that divestiture is reasonably necessary to avoid a potential conflict of interest. Once the divestiture is complete, I will update my recusal statement.

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former clients – **the Midland Group, Powerful Performance Solutions, LLC, and the Hon. Ann Mesle** -- is a party or represents a party. For the purposes of the Executive Order, I had no

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<sup>3</sup> *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. *See* 5 C.F.R. § 2640.102(l).

<sup>4</sup> *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties. *See* 5 C.F.R. § 2640.102(m).



other “former clients” to whom I provided consulting services while self-employed as a consultant, and my consultancy is in abeyance and not taking on any new clients. I understand that my recusals regarding will last for two years from the date that I joined federal service and will end after **December 12, 2023**.

For the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting even if one of the stakeholders is a former employer or former client.”<sup>5</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

#### *IMPARTIALITY REGULATIONS*

In addition to my pledge restrictions, I note that, pursuant to the impartiality ethics regulations at 5 C.F.R. § 2635.502, I am also obliged not to participate personally and substantially in a particular matter involving specific parties in which my spouse’s employer, **the Midland Group** or any of its clients, is a party or representing a party.

#### *DIRECTIVE AND CONCLUSION*

In order to ensure that I do not participate in particular matters from which I am recused, I am asking the Deputy Regional Administrator to act on such matters without my knowledge or involvement. Therefore, please do not send or copy me on substantive emails, request that I attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions with regard to a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to the Regional Counsel or OGC/Ethics.

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my circumstances, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Dan Utech, Chief of Staff  
Edward H. Chu, Deputy Regional Administrator  
Leslie Humphrey, Regional Counsel  
Karina Borromeo, Assistant Deputy Ethics Official  
Justina Fugh, Director, Ethics Office, EPA Headquarters

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<sup>5</sup> See OGE Advisory DO-09-011 (3/26/09).



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BLVD  
LENEXA, KS 66219

**MEMORANDUM**

SUBJECT: Updated Recusal Statement

FROM: Meghan A. McCollister MEGHAN  
Regional Administrator MCCOLLISTER

Digitally signed by  
MEGHAN MCCOLLISTER  
Date: 2022.03.01 15:03:32  
-06'00'

TO: Michael S. Regan  
Administrator

I have previously consulted with the Office of General Counsel/Ethics (OGC/Ethics) and been advised about my ethics obligations. This memorandum formally notifies you of my continuing obligation to recuse myself from participating in certain matters in which I have a financial interest or a former business relationship. Due to a change in my financial investments, I am updating my current recusal statement dated February 14, 2022, to remove **Berkshire Hathaway** and its related industry sectors due to divestiture of this stock as of March 1, 2022. My other recusal obligations are unchanged. This recusal statement now supersedes my February 14, 2022, recusal statement.

*FINANCIAL CONFLICTS OF INTEREST*

As required by the criminal conflict of interest law, 18 U.S.C. § 208(a), I will not participate personally and substantially<sup>1</sup> in any particular matter<sup>2</sup> that will have a direct and predictable effect on my financial interests or the financial interests of a person whose interests are imputed to me unless I first obtain a written conflict of interest waiver, pursuant to 18 U.S.C.

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<sup>1</sup> To participate “*personally*” means to participate directly. It includes the direct and active supervision of the participation of a subordinate in the matter. To participate “*substantially*” means that the employee's involvement is of significance to the matter. Participation may be substantial even though it is not determinative of the outcome of a particular matter. However, it requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. A finding of substantiality should be based not only on the effort devoted to the matter, but also on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. Personal and substantial participation may occur when, for example, an employee participates through decision, approval, disapproval, recommendation, investigation or the rendering of advice in a particular matter. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(2).

<sup>2</sup> A “*particular matter*” includes only matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The term may include matters which do not involve formal parties and may extend to legislation or policy making that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not, however, cover consideration or adoption of broad policy options directed to the interests of a large and diverse group of persons. See 5 Code of Federal Regulations (C.F.R.) § 2640.103(a)(1).

§ 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). The interests of the following persons are imputed to me: my spouse or my minor child; a general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

*Particular matters involving specific parties<sup>3</sup>:*

Given the value of my financial interests, I must disqualify from participating personally and substantially in any particular matter that affects the financial interests of **Apple or Cerner Corporation** as a specific party or a non-party competitor.

*Particular Matters of General Applicability<sup>4</sup>*

Based on the value of my current financial interests, I am disqualified from participating personally and substantially in any particular matter of general applicability affecting the financial interests of companies in the following industry sectors:

Computer technology/media content & entertainment  
Healthcare/health information technology services & equipment

*OBLIGATIONS UNDER EXECUTIVE ORDER 13989*

Pursuant to Section 1, Paragraph 2 of the Executive Order, I understand that I am prohibited from participating in any particular matter involving specific parties in which my former clients – **the Midland Group, Powerful Performance Solutions, LLC, and the Hon. Ann Mesle** -- is a party or represents a party. For the purposes of the Executive Order, I had no other “former clients” to whom I provided consulting services while self-employed as a consultant, and my consultancy is in abeyance and not taking on any new clients. I understand that my recusals regarding will last for two years from the date that I joined federal service and will end after **December 12, 2023**.

For the purposes of this pledge obligation, the term “particular matters involving specific parties” is broadened to include any meetings or other communication relating to the performance of my official duties, unless the communication applies to a particular matter of general applicability and participation in the meeting or other event is open to all interested parties. I am further advised that the term “open to all interested parties” means that the meeting should include a multiplicity of parties. If, for example, there is “a meeting with five or more stakeholders regarding a given policy or piece of legislation, [then I] could attend such a meeting

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<sup>3</sup> *Particular matter involving specific parties* includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties. The term typically involves a specific proceeding affecting the legal rights of the parties, or an isolatable transaction or related set of transactions between identified parties. *See* 5 C.F.R. § 2640.102(l).

<sup>4</sup> *Particular matter of general applicability* means a particular matter that is focused on the interests of a discrete and identifiable class of persons, but does not involve specific parties. *See* 5 C.F.R. § 2640.102(m).

even if one of the stakeholders is a former employer or former client.”<sup>5</sup> Should a question arise as to whether a specific forum qualifies as “open to all interested parties,” then I will consult with OGC/Ethics.

### *IMPARTIALITY REGULATIONS*

In addition to my pledge restrictions, I note that, pursuant to the impartiality ethics regulations at 5 C.F.R. § 2635.502, I am also obliged not to participate personally and substantially in a particular matter involving specific parties in which my spouse’s employer, **the Midland Group** or any of its clients, is a party or representing a party.

### *DIRECTIVE AND CONCLUSION*

In order to ensure that I do not participate in particular matters from which I am recused, I am asking the Deputy Regional Administrator to act on such matters without my knowledge or involvement. Therefore, please do not send or copy me on substantive emails, request that I attend meetings, or participate in any discussions, make recommendations, or otherwise make decisions with regard to a particular matter covered by my recusal. Official actions on such matters should be made without my recommendation, knowledge, or involvement. Any inquiries regarding the extent of my recusals should be directed to the Regional Counsel or OGC/Ethics.

In consultation with OGC/Ethics, I will revise and update my recusal statement whenever warranted by changed circumstances, including changes in my financial interests, changes in my personal or business relationships, or any changes to my EPA duties. In the event of any changes to my circumstances, I will provide a copy of the revised recusal statement to you and OGC/Ethics.

cc: Janet McCabe, Deputy Administrator  
Dan Utech, Chief of Staff  
Edward H. Chu, Deputy Regional Administrator  
Leslie Humphrey, Regional Counsel  
Karina Borromeo, Assistant Deputy Ethics Official  
Justina Fugh, Director, Ethics Office

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<sup>5</sup> See OGE Advisory DO-09-011 (3/26/09).



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

**SUBJECT:** Approval of Outside Teaching Activity  
JAMES  
Digitally signed by JAMES PAYNE  
Date: 2021.03.18  
14:48:07 -04'00'

**FROM:** James Payne PAYNE  
Designated Agency Ethics Official and Deputy General Counsel for  
Environmental Media and Regional Law Offices

**TO:** Carlton Waterhouse  
Deputy Assistant Administrator  
Office of Land and Emergency Management

I have received your request to continue to engage in compensated outside employment as an adjunct professor at the Howard University School of Law during the Spring semester of 2021. You will be teaching a property law course. Based on the information you have provided, I am approving your request as consistent with 5 Code of Regulations (C.F.R.) Part 2635, Subpart H, and as required by 5 C.F.R. § 2636.307. I want to remind you of the relevant ethics obligations as you undertake this activity:

**Financial Conflicts of Interest and Impartiality Rules**

Because you will be compensated by Howard University, you may be considered to be an employee (as opposed to an independent contractor). If so, you have an imputed financial interest in the law school pursuant to the criminal conflict of interest law, 18 United States Code (U.S.C.) § 208. This means that you may not participate in an EPA or other government matter that will have a direct and predictable effect on the law school's financial interests. As such, you may not participate personally and substantially in a particular matter that affects the financial interests of the law school as a specific party, such as a grant or procurement, or a decision for the Agency to financially support a conference at the law school. Also, you may not participate in an EPA matter of general applicability that will affect the law school's financial interests as a member of a discreet and identifiable class, such as a regulatory or legislative matter affecting all laws schools.

In addition, or, in the alternative if you are not an "employee," you have a "covered relationship" with the law school during the term of your teaching activity and for a year after the activity ends pursuant to the impartiality regulations. This means that

you may not participate in a specific party matter at EPA in which the law school is a party or represents a party if a reasonable person will question your impartiality, unless you are authorized to do so by me or Justina Fugh. See 5 C.F.R. § 2535.502. For example, you may not participate in your official capacity in a decision to grant a meeting with a law school representative, participate in, or recommend a colleague to participate in, a conference at the law school.

### Representational restrictions

You are also prohibited by a criminal law from acting as an agent or attorney for the law school before a federal agency or court in any matter in which the United States is a party or has a direct and substantial interest. See 18 U.S.C § 205. In your capacity as an adjunct faculty member, you may not appear before or communicate with an officer or employee of a federal agency or court on behalf of the law school, which includes contacting federal employees to speak before your law school classes or at other law school activities in their official capacities.

### Misuse of position

You may not use government time or resources, such as the official time of a subordinate, or your official title, other than as part of general biographical information that is given no more prominence than other aspects of your professional or educational background. Also, you may not use or disclose non-public information for the furtherance of this activity, or otherwise use your official position for the private gain of the law school. See *generally*, 5 C.F.R. Part 2635, Subpart G.

### Outside earned income limitation

Because you are a non-career member of the Senior Executive Service, your outside earned income from all sources during 2021 may not exceed \$25,596<sup>i</sup>.

Finally, you will have to report both the income and the outside teaching position on your relevant financial disclosure form. As always, if you have any questions, please feel free to contact me at 202-564-0212 or Justina Fugh at 202-564-1786.

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<sup>i</sup> This amount is pro rated, as required by 5 C.F.R. § 2636.304(b).